

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN 'CLEAN DIESEL'
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

MDL 2672 CRB (JSC)

**[REDACTED VERSION OF
DOCUMENT SOUGHT TO BE SEALED]**

This Document Relates to:

Audi CO₂ Cases

**AUDI CO₂ CONSOLIDATED
CONSUMER CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

MICHAEL BECK, *et al.*, on behalf of
themselves and all others similarly on behalf
of all others similarly situated,

Plaintiffs,

v.

AUDI AG; AUDI OF AMERICA, LLC,
VOLKSWAGEN AG, VOLKSWAGEN
GROUP OF AMERICA, INC., ROBERT
BOSCH LLC, and ROBERT BOSCH
GMBH,

Defendants.

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I. INTRODUCTION

Plaintiffs Michael Beck, Ira Bernstein, Hector Castillo, Joseph Denney, Mark Dressel, Lyle Fairless, Michael Gray, Russell Green, Jonathan Hecker, Paul Joachimczyk, Connie Jones, Raghu Katta, Ira Margolis, Vinod Marur, Daniel Satterlee, Paul Sherry, Scott Snyder, Allen Taylor, Babu Thomas, Frank Edwin Thompson, Patricia Vance, and Geert Wenes individually and on behalf of all others similarly situated (the “Class”), allege the following against Audi AG, Audi of America, LLC (collectively, “Audi”), Volkswagen Group of America, Inc., Volkswagen AG (collectively, “Volkswagen”), Robert Bosch GmbH, and Robert Bosch LLC (collectively, “Bosch”) (together with Audi and Volkswagen, “Defendants”) based where applicable on personal knowledge, information and belief, and the investigation of counsel.

II. NATURE OF THE ACTION

1. This action is a further development in a massive ongoing fraud perpetrated by Volkswagen and its Audi and Porsche subsidiaries. In September 2015, the Environmental Protection Agency (“EPA”) announced that it had discovered a brazen scheme, in which these manufacturers used embedded software or firmware in their diesel vehicles—in regulatory parlance, a “defeat device”—to defeat emissions testing for certain pollutants (oxides of nitrogen, or “NOx”). In effect, these vehicles’ emissions control systems functioned fully only while undergoing emissions testing, and spewed as much as 40 *times* the legal level of these pollutants during normal operation, meaning that the automakers’ “Clean Diesel” advertisements of the affected vehicles were false. This allowed the 11 million cheating diesel vehicles that were sold worldwide to achieve better performance, greater fuel efficiency, and longer service intervals, but at the expense of a massive quantity of additional noxious pollution. Litigation in that case has so far yielded settlements and penalties totaling over \$20 billion and a guilty plea on behalf of Volkswagen AG.

2. Rather than engineer cars that actually complied with the emissions requirements and lived up to their “Clean” advertising, Volkswagen, Audi, and Porsche designed their diesel vehicles to cheat on the tests, and perpetrated a massive, worldwide fraud on consumers and government regulators alike. This complaint involves an extension of the same unethical and

1 deceptive business practices. When faced with a similar challenge—the EPA’s fleet-wide
2 standards for the emission of carbon dioxide (“CO₂”) in gasoline vehicles and the NHTSA’s fleet-
3 wide fuel economy standards—Volkswagen and Audi once again took an unethical shortcut: they
4 engineered their larger vehicles to detect when they might be undergoing emissions testing, and to
5 operate the transmission differently under conditions consistent with testing from when they are
6 being driven normally. As a result, the vehicles are able to cheat on emissions tests by emitting
7 far less CO₂ and other greenhouse gases than it would under ordinary driving conditions.

8 3. The NO_x defeat device in the diesel vehicles and the CO₂ defeat device in the
9 gasoline vehicles use different methods to alter their emissions under testing conditions, but they
10 share several key aspects. Most notably, they use at least one of the same triggers to identify
11 testing conditions: the steering wheel. Emissions testing takes place on a dynamometer—
12 essentially a car-size treadmill—and so unlike in real-world driving, the steering wheel is never
13 turned. Thus, like the NO_x defeat device in the diesel vehicles, turning the steering wheel after
14 starting up the car disengages the test-defeating low-power mode and engages the normal, higher-
15 polluting mode. The industry term for this is “cycle optimization”—that is, optimizing vehicle
16 functionality to pass test cycles, while operating differently during normal driving. This form of
17 cheating renders test results meaningless and advertising based on them false and misleading.

18 4. This nationwide class action concerns the installation of “defeat devices” in
19 hundreds of thousands of Audi gasoline vehicles marketed and sold in the United States. The
20 “defeat device” circumvents emissions testing by keeping engine speed—and thus carbon dioxide
21 emissions—artificially low in conditions that only occur when the vehicles are undergoing
22 emissions testing. During normal operation, this program is deactivated, and the vehicles emit
23 carbon dioxide at significantly higher levels. The result is that Audi’s vehicles sold in the United
24 States meet fleetwide CO₂ emissions requirements in name only: in reality, they emit much, much
25 more.

26 5. This particular “defeat device” is present in at least some of Audi’s gasoline-
27 powered vehicles, and likely in several other vehicles as well. Defendants represented to
28 consumers and regulators that these vehicles offered excellent performance in combination with

1 legal, clean emissions; in truth, those characteristics were mutually exclusive, at least in the Audi
2 fleet. While undergoing emissions testing, the vehicles sacrificed high performance to limit
3 emissions and improve fuel economy; while on the road, the vehicles may have performed as
4 advertised but emitted higher amounts of CO₂ and other pollutants and achieved much worse fuel
5 economy.

6 6. Instead of delivering on their promises of high performance coupled with low or
7 compliant emissions, Defendants devised a way to make it appear that their cars did what they
8 said they would when, in fact, they did not. Put simply, Defendants lied to consumers and
9 regulators alike and continued to lie over a period of years.

10 7. Defendants intentionally breached U.S. laws, EPA and CARB regulations and
11 California law by selling cars in the United States and California that purposefully evaded
12 applicable laws. As summarized by Cynthia Giles, Assistant Administrator for EPA's Office of
13 Enforcement and Compliance: "Using a defeat device in cars to evade clean air standards is
14 illegal and a threat to public health." Defendants also misled the buyers and lessees of their
15 vehicles by advertising them as environmentally friendly, and by failing to disclose that the
16 vehicles were only able to be sold in the United States at all because they cheated on emissions
17 tests.

18 8. The story of Volkswagen's 2015 NOx defeat device scandal is now well-known in
19 the public arena: Volkswagen and its subsidiaries installed software that used signals such as
20 whether the steering wheel was being turned to recognize when diesel vehicles were undergoing
21 emissions testing, causing the vehicles' NOx emissions control systems to operate at compliant
22 levels *only* during testing. Under normal operating conditions, these emissions control systems
23 were deactivated or operated at lower levels, resulting in increased performance and fuel
24 efficiency but vastly increased NOx levels. In the autumn of 2015, the Environmental Protection
25 Agency ("EPA") and the California Air Resources Board ("CARB") issued Notices of Violation
26 for these Volkswagen defeat devices, and both private and government litigation ensued.

27 9. On November 5, 2016, German newspaper *Bild am Sonntag* reported that CARB
28 had discovered another defeat device, this time on several Audi models equipped with a certain 8-

1 speed automatic transmission. Like the defeat devices used in the diesel vehicles, this device uses
 2 engine and transmission management software and the car's sensors to detect when the vehicle is
 3 undergoing emissions testing, and then operates vehicle systems to reduce carbon dioxide
 4 emissions to legal levels only during test cycles.

5 10. According to the *Bild am Sonntag* report, the device works as follows: when the
 6 affected vehicles are turned on, they activate a "warm-up" mode. In that mode, the engine
 7 management computer instructs the automatic transmission to change gears at unusually low
 8 engine speeds (commonly measured in revolutions per minute or RPM), keeping engine speed
 9 low and thus burning less fuel and emitting lower amounts of carbon dioxide. However, this
 10 mode remains active only until the steering wheel is turned 15 degrees or more, at which point the
 11 engine management computer switches the transmission into normal mode, wherein the
 12 transmission shifts at normal, higher RPM, offering higher performance, lower fuel economy, and
 13 significantly greater carbon dioxide emissions.

14 11. Thus, during emissions testing, which typically takes place on a dynamometer, the
 15 car remains in "warm-up" mode indefinitely, because the steering wheel is not turned.
 16 Meanwhile, in normal driving conditions, any turn requires the steering wheel to be rotated more
 17 than 15 degrees, and the car switches to its normal shifting program.

18 12. *Bild am Sonntag* further reports that Audi documents confirm this scheme. In
 19 February 2013, during testing of Audi vehicles, Audi's then-head of powertrain development,
 20 Axel Eiser, asked when the "cycle-optimized shift program" would be ready, and suggested that
 21 the emissions-cheating shift program be configured so that it "runs at 100% on the roller, but only
 22 .01% with the customer." [REDACTED]¹

23 13. The transmission used in this scheme is ZF's 8HP55 eight-speed automatic,
 24 referred to by Audi as AL551-8Q. These transmissions are equipped on numerous Audi vehicles,
 25 including, on information and belief, certain model years of the A6, A7, A8, and Q5 models. The
 26 transmission may also be equipped on additional models, and the list of vehicles equipped with
 27

28
 1 [REDACTED]

1 this transmission that also use the above-described defeat device software may grow or change as
2 the investigations proceed.

3 14. The gasoline-powered vehicles equipped with the newly-discovered defeat device
4 software targeting carbon dioxide are the subject of this lawsuit, and are referred to hereinafter as
5 the “Class Vehicles,” and include the following vehicles with 3.0-liter or larger engines:

Model	Model Year
Audi A6	2012-2016
Audi A7	2012-2016
Audi A8 and A8L	2012-2016
Audi Q5	2013-2016

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10 15. Due to Defendants’ fraud, there are now at least 100,000 vehicles on the road with
11 illegal emissions systems. These vehicles were issued EPA Certificates of Conformity (“COCs”),
12 or CARB Executive Orders (“EOs”), which are legally required for vehicle sale in the United
13 States, and were, because of the existence of the defeat device, illegally obtained. Had Plaintiffs
14 known that the COCs and EOs were obtained through fraud, they would not have purchased these
15 vehicles. Plaintiffs now own illegal, polluting vehicles and have suffered economic damages
16 because the vehicles are not as advertised, and no recall could fix the emissions problem without
17 affecting the reliability, durability, fuel efficiency and/or driving dynamics of the cars. Plaintiffs
18 are further damaged because the fuel efficiency was falsely reported. Thus, to the extent these
19 vehicles can be retrofitted to comply with federal and state emissions requirements, Class
20 members will suffer diminution in value and economic loss.

21 16. The environment has suffered as well. In 2008, the first study connecting increased
22 CO₂ emissions to deaths was conducted at Stanford University. This preliminary study found a
23 cause and effect relationship between the two, concluding that upward of 20,000 air-pollution-
24 related deaths per year per degree Celsius may be due to this greenhouse gas. 2016 studies
25 confirm that CO₂ can be lethal in extreme doses. Indeed, increased CO₂ is one of the major causes
26 of global warming. Its effect on California’s climate alone is severe. According to the U.S. Global
27 Change Research Program, warming in California's Central Valley caused by carbon emissions is
28 projected to significantly reduce the yields of tomatoes, wheat, rice, maize and sunflowers in that

1 region. For this reason, increases in CO₂ emissions have immediate and deleterious effects on the
 2 environment. Plaintiffs purchasing the Class Vehicles did not know that they were consuming
 3 more fuel under ordinary driving conditions, which necessarily means more CO₂ emissions.
 4 Plaintiffs also unknowingly emitted more NO_x and carbon monoxide when driving the Class
 5 Vehicles on the road than the levels reported by emission testing and advertised by Audi.

6 17. Because of Defendants' actions, the Class Vehicles that were sold to Plaintiffs and
 7 the Class are not what Volkswagen and Audi promised. During normal operation, these vehicles
 8 pollute the atmosphere with much higher levels of pollutants and greenhouse gases than the
 9 artificially-manipulated test results disclose, or than are permitted by federal and state
 10 environmental protection laws. Meanwhile, when the engine and transmission are operated in a
 11 manner that actually limits pollution as certified and advertised, the vehicles cannot also deliver
 12 the performance that Volkswagen and Audi advertise.

13 18. Defendants' actions substantially increased pollution and decreased the current and
 14 resale value of these vehicles.

15 19. Plaintiffs bring this action against the Defendants for violations of the federal
 16 Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961 *et seq.* ("RICO")) and
 17 Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.* ("MMWA")), and the warranty and
 18 consumer protection laws of all 50 states and the District of Columbia, seeking monetary
 19 damages and injunctive relief. Plaintiffs and Class members are entitled to a significant award of
 20 punitive or exemplary damages because Defendants deliberately, and with malice, deceived
 21 Plaintiffs and Class members for a period of years.

22 III. PARTIES

23 A. Plaintiffs

24 20. For ease of reference, the following chart identifies the representative Plaintiffs
 25 and the state(s) in which they reside and purchased their Class Vehicles:

26 Class Representative	State of Residence	State of Purchase	Model Year	Make/Model
27 Beck, Michael	NY	NY	2013	Audi A7
28 Bernstein, Ira	NY	NY	2014	Audi A8

Class Representative	State of Residence	State of Purchase	Model Year	Make/Model
Castillo, Hector	CA	CA	2013	Audi A6
Denney, Joseph	VA	VA	2012	Audi A6
Dressel, Mark	WI	MN	2014	Audi A8
Fairless, Lyle	WV	WV	2013	Audi A8
Gray, Michael	MD	VA	2016	Audi Q5
Green, Russell	CA	CA	2016	Audi Q5
Hecker, Jonathan	CA	CA	2013	Audi A6
Joachimczyk, Paul	FL	WI	2013	Audi A8
Jones, Connie	MO	MO	2013	Audi A6
Katta, Raghu	NJ	NJ	2015	Audi Q5
Margolis, Ira	MI	MI	2014	Audi A8
Marur, Vinod	CA	CA	2013	Audi A8
Satterlee, Daniel	ID	ID	2013	Audi A8L
Sherry, Paul	MA	MA	2014	Audi A6
Snyder, Scott	AZ	CA	2012	Audi A6
Taylor, Allen	FL	FL	2013	Audi A6
Thomas, Babu	FL	FL	2014	Audi A8
Thompson, Frank Edwin	CA	CA	2014	Audi Q5
Vance, Patricia	CO	CO	2013	Audi A6
Wenes, Geert	NM	NM	2013	Audi Q5

21. Plaintiff **Michael Beck** (for the purpose of this paragraph, “Plaintiff”), a citizen of New York, residing in Selden, New York, bought a 2013 Audi A7 (for the purpose this paragraph, the “Class Vehicle”) on or about April 28, 2013 at Audi of Smithtown, in Smithtown, New York. Plaintiff decided to buy the Class Vehicle based in part on Audi’s representations regarding the vehicle’s emissions, fuel economy, and/or performance. At the time of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by emitting CO₂ at levels that are greater than represented. Nor was Plaintiff aware that his Class Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a

1 concrete injury as a direct and proximate result of Defendants' misconduct, and would not have
2 purchased the Class Vehicle, or would have paid less for it, had Defendants not concealed the
3 unauthorized emission control devices.

4 22. Plaintiff **Ira Bernstein** (for the purpose of this paragraph, "Plaintiff"), a citizen of
5 New York, residing in West Nyack, New York bought a 2014 Audi A8 (for the purpose this
6 paragraph, the "Class Vehicle") on or about November 26, 2013 at Palisades Audi, in Nyack,
7 New York. Plaintiff decided to buy the Class Vehicle based in part on Audi's representations
8 regarding the vehicle's emissions, fuel economy, and/or performance. At the time of purchase,
9 Plaintiff did not know that the Class Vehicle could perform as advertised only by emitting CO₂ at
10 levels that are greater than represented. Nor was Plaintiff aware that his Class Vehicle was
11 equipped with undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a
12 concrete injury as a direct and proximate result of Defendants' misconduct, and would not have
13 purchased the Class Vehicle, or would have paid less for it, had Defendants not concealed the
14 unauthorized emission control devices.

15 23. Plaintiff **Hector Castillo** (for the purpose of this paragraph, "Plaintiff"), a citizen
16 of California, residing in Santa Maria, California, bought a 2013 Audi A6 (for the purpose this
17 paragraph, the "Class Vehicle") on or about August 21, 2016 at Capitol Volkswagen, in San Jose,
18 California. Plaintiff decided to buy the Class Vehicle based in part on Audi's representations
19 regarding the vehicle's emissions, fuel economy, and/or performance. At the time of purchase,
20 Plaintiff did not know that the Class Vehicle could perform as advertised only by emitting CO₂ at
21 levels that are greater than represented. Nor was Plaintiff aware that his Class Vehicle was
22 equipped with undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a
23 concrete injury as a direct and proximate result of Defendants' misconduct, and would not have
24 purchased the Class Vehicle, or would have paid less for it, had Defendants not concealed the
25 unauthorized emission control devices.

26 24. Plaintiff **Joseph Denney** (for the purpose of this paragraph, "Plaintiff"), a citizen
27 of Virginia, residing in Dumfries, Virginia, bought a 2012 Audi A6 (for the purpose this
28 paragraph, the "Class Vehicle") on or about June 4, 2015 at Honda of Chantilly, in Chantilly,

1 Virginia. Plaintiff decided to buy the Class Vehicle based in part on Audi's representations
2 regarding the vehicle's emissions, fuel economy, and/or performance. At the time of purchase,
3 Plaintiff did not know that the Class Vehicle could perform as advertised only by emitting CO₂ at
4 levels that are greater than represented. Nor was Plaintiff aware that his Class Vehicle was
5 equipped with undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a
6 concrete injury as a direct and proximate result of Defendants' misconduct, and would not have
7 purchased the Class Vehicle, or would have paid less for it, had Defendants not concealed the
8 unauthorized emission control devices.

9 25. Plaintiff **Mark Dressel** (for the purpose of this paragraph, "Plaintiff"), a citizen of
10 Wisconsin, residing in Hudson, Wisconsin, bought a 2014 Audi A8 (for the purpose this
11 paragraph, the "Class Vehicle") on or about April 3, 2016 at Audi St. Paul, in Maplewood,
12 Minnesota. Plaintiff decided to buy the Class Vehicle based in part on Audi's representations
13 regarding the vehicle's emissions, fuel economy, and/or performance. At the time of purchase,
14 Plaintiff did not know that the Class Vehicle could perform as advertised only by emitting CO₂ at
15 levels that are greater than represented. Nor was Plaintiff aware that his Class Vehicle was
16 equipped with undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a
17 concrete injury as a direct and proximate result of Defendants' misconduct, and would not have
18 purchased the Class Vehicle, or would have paid less for it, had Defendants not concealed the
19 unauthorized emission control devices.

20 26. Plaintiff **Lyle Fairless** (for the purpose of this paragraph, "Plaintiff"), a citizen of
21 West Virginia, residing in Charleston, West Virginia, bought a 2013 Audi A8 (for the purpose
22 this paragraph, the "Class Vehicle") on or about September 2, 2015 at Moses Factory Outlet, in
23 Hurricane, West Virginia. Plaintiff decided to buy the Class Vehicle based in part on Audi's
24 representations regarding the vehicle's emissions, fuel economy, and/or performance. At the time
25 of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by
26 emitting CO₂ at levels that are greater than represented. Nor was Plaintiff aware that his Class
27 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
28 has suffered a concrete injury as a direct and proximate result of Defendants' misconduct, and

1 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
2 concealed the unauthorized emission control devices.

3 27. Plaintiff **Michael Gray** (for the purpose of this paragraph, “Plaintiff”), a citizen of
4 Maryland, residing in White Plains, Maryland, bought a 2016 Audi Q5 (for the purpose this
5 paragraph, the “Class Vehicle”) on or about February 27, 2016, at Audi Tysons Corner, in
6 Vienna, Virginia. Plaintiff decided to buy the Class Vehicle based in part on Audi’s
7 representations regarding the vehicle’s emissions, fuel economy, and/or performance. At the time
8 of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by
9 emitting CO2 at levels that are greater than represented. Nor was Plaintiff aware that his Class
10 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
11 has suffered a concrete injury as a direct and proximate result of Defendants’ misconduct, and
12 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
13 concealed the unauthorized emission control devices.

14 28. Plaintiff **Russell Green** (for the purpose of this paragraph, “Plaintiff”), a citizen of
15 California, residing in Crescent City, California, leased a 2016 Audi Q5 (for the purpose this
16 paragraph, the “Class Vehicle”) on or about September 25, 2016 at DCH Audi Oxnard, in
17 Oxnard, California. Plaintiff decided to lease the Class Vehicle based in part on Audi’s
18 representations regarding the vehicle’s emissions, fuel economy, and/or performance. At the time
19 of lease, Plaintiff did not know that the Class Vehicle could perform as advertised only by
20 emitting CO2 at levels that are greater than represented. Nor was Plaintiff aware that his Class
21 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
22 has suffered a concrete injury as a direct and proximate result of Defendants’ misconduct, and
23 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
24 concealed the unauthorized emission control devices.

25 29. Plaintiff **Jonathan Hecker** (for the purpose of this paragraph, “Plaintiff”), a
26 citizen of California, residing in Agoura Hills, California, bought a 2013 Audi A6 (for the
27 purpose this paragraph, the “Class Vehicle”) on or about October 15, 2012 at Rusnak/Westlake
28 Audi, in Westlake Village, California. Plaintiff decided to buy the Class Vehicle based in part on

1 Audi's representations regarding the vehicle's emissions, fuel economy, and/or performance. At
2 the time of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised
3 only by emitting CO₂ at levels that are greater than represented. Nor was Plaintiff aware that his
4 Class Vehicle was equipped with undisclosed and/or unauthorized emission control devices.
5 Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants'
6 misconduct, and would not have purchased the Class Vehicle, or would have paid less for it, had
7 Defendants not concealed the unauthorized emission control devices.

8 30. Plaintiff **Paul Joachimczyk** (for the purpose of this paragraph, "Plaintiff"), a
9 citizen of Florida, residing in Port Orange, Florida, bought a 2013 Audi A8 (for the purpose this
10 paragraph, the "Class Vehicle") in or about May 2013 from International Auto Group's Audi
11 Milwaukee dealership in Milwaukee, WI. Plaintiff decided to buy the Class Vehicle based in part
12 on Audi's representations regarding the vehicle's emissions, fuel economy, and/or performance.
13 At the time of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised
14 only by emitting CO₂ at levels that are greater than represented. Nor was Plaintiff aware that his
15 Class Vehicle was equipped with undisclosed and/or unauthorized emission control devices.
16 Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants'
17 misconduct, and would not have purchased the Class Vehicle, or would have paid less for it, had
18 Defendants not concealed the unauthorized emission control devices.

19 31. Plaintiff **Connie Jones** (for the purpose of this paragraph, "Plaintiff"), a citizen of
20 Missouri, residing in Sedalia, Missouri, bought a 2013 Audi A6 (for the purpose this paragraph,
21 the "Class Vehicle") on or about June 5, 2013 at Kansas City Audi, in Kansas City, Missouri.
22 Plaintiff decided to buy the Class Vehicle based in part on Audi's representations regarding the
23 vehicle's emissions, fuel economy, and/or performance. At the time of purchase, Plaintiff did not
24 know that the Class Vehicle could perform as advertised only by emitting CO₂ at levels that are
25 greater than represented. Nor was Plaintiff aware that her Class Vehicle was equipped with
26 undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a concrete injury
27 as a direct and proximate result of Defendants' misconduct, and would not have purchased the
28

1 Class Vehicle, or would have paid less for it, had Defendants not concealed the unauthorized
2 emission control devices.

3 32. Plaintiff **Raghu Katta** (for the purpose of this paragraph, “Plaintiff”), a citizen of
4 New Jersey, residing in Little Ferry, New Jersey, purchased a 2015 Audi Q5 (for the purpose this
5 paragraph, the “Class Vehicle”) on or about November 12, 2015 at Town Audi, in Englewood,
6 New Jersey. Plaintiff decided to purchase the Class Vehicle based in part on Audi’s
7 representations regarding the vehicle’s emissions, fuel economy, and/or performance. At the time
8 of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by
9 emitting CO2 at levels that are greater than represented. Nor was Plaintiff aware that his Class
10 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
11 has suffered a concrete injury as a direct and proximate result of Defendants’ misconduct, and
12 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
13 concealed the unauthorized emission control devices.

14 33. Plaintiff **Ira Margolis** (for the purpose of this paragraph, “Plaintiff”), a citizen of
15 Michigan, residing in Bingham Farms, Michigan, bought a 2014 Audi A8 (for the purpose this
16 paragraph, the “Class Vehicle”) on or about October 12, 2015 at Auto Source Wholesale in Troy,
17 Michigan. Plaintiff decided to buy the Class Vehicle based in part on Audi’s representations
18 regarding the vehicle’s emissions, fuel economy, and/or performance. At the time of purchase,
19 Plaintiff did not know that the Class Vehicle could perform as advertised only by emitting CO2 at
20 levels that are greater than represented. Nor was Plaintiff aware that his Class Vehicle was
21 equipped with undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a
22 concrete injury as a direct and proximate result of Defendants’ misconduct, and would not have
23 purchased the Class Vehicle, or would have paid less for it, had Defendants not concealed the
24 unauthorized emission control devices.

25 34. Plaintiff **Vinod Marur** (for the purpose of this paragraph, “Plaintiff”), a citizen of
26 California, residing in Palo Alto, California, bought a 2013 Audi A8 (for the purpose this
27 paragraph, the “Class Vehicle”) on or about May 23, 2013 at cartelligent.com in San Jose,
28 California. Plaintiff decided to buy the Class Vehicle based in part on Audi’s representations

1 regarding the vehicle's emissions, fuel economy, and/or performance. At the time of purchase,
2 Plaintiff did not know that the Class Vehicle could perform as advertised only by emitting CO2 at
3 levels that are greater than represented. Nor was Plaintiff aware that his Class Vehicle was
4 equipped with undisclosed and/or unauthorized emission control devices. Plaintiff has suffered a
5 concrete injury as a direct and proximate result of Defendants' misconduct, and would not have
6 purchased the Class Vehicle, or would have paid less for it, had Defendants not concealed the
7 unauthorized emission control devices.

8 35. Plaintiff **Daniel Satterlee** (for the purpose of this paragraph, "Plaintiff"), a citizen
9 of Idaho, residing in Meridian, Idaho, bought a 2013 Audi A8L (for the purpose this paragraph,
10 the "Class Vehicle") on or about November 17, 2016 at Audi Boise, in Boise, Idaho. Plaintiff
11 decided to buy the Class Vehicle based in part on Audi's representations regarding the vehicle's
12 emissions, fuel economy, and/or performance. At the time of purchase, Plaintiff did not know
13 that the Class Vehicle could perform as advertised only by emitting CO2 at levels that are greater
14 than represented. Nor was Plaintiff aware that his Class Vehicle was equipped with undisclosed
15 and/or unauthorized emission control devices. Plaintiff has suffered a concrete injury as a direct
16 and proximate result of Defendants' misconduct, and would not have purchased the Class
17 Vehicle, or would have paid less for it, had Defendants not concealed the unauthorized emission
18 control devices.

19 36. Plaintiff **Paul Sherry** (for the purpose of this paragraph, "Plaintiff"), a citizen of
20 Massachusetts, residing in Swampscott, Massachusetts, bought a 2014 Audi A6 (for the purpose
21 this paragraph, the "Class Vehicle") on or about October 12, 2015 at Audi Brookline, a Herb
22 Chambers Company, in Brookline, Massachusetts. Plaintiff decided to buy the Class Vehicle
23 based in part on Audi's representations regarding the vehicle's emissions, fuel economy, and/or
24 performance. At the time of purchase, Plaintiff did not know that the Class Vehicle could
25 perform as advertised only by emitting CO2 at levels that are greater than represented. Nor was
26 Plaintiff aware that his Class Vehicle was equipped with undisclosed and/or unauthorized
27 emission control devices. Plaintiff has suffered a concrete injury as a direct and proximate result
28

1 of Defendants' misconduct, and would not have purchased the Class Vehicle, or would have paid
2 less for it, had Defendants not concealed the unauthorized emission control devices.

3 37. Plaintiff **Scott Snyder** (for the purpose of this paragraph, "Plaintiff"), a citizen of
4 Arizona, residing in Paradise Valley, Arizona, leased a 2012 Audi A6 (for the purpose this
5 paragraph, the "Class Vehicle") on or about July 25, 2012 at Walter's Automotive in Riverside,
6 California. Plaintiff decided to lease then eventually purchase the Class Vehicle based in part on
7 Audi's representations regarding the vehicle's emissions, fuel economy, and/or performance. At
8 the time of lease and purchase, Plaintiff did not know that the Class Vehicle could perform as
9 advertised only by emitting CO2 at levels that are greater than represented. Nor was Plaintiff
10 aware that his Class Vehicle was equipped with undisclosed and/or unauthorized emission control
11 devices. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants'
12 misconduct, and would not have purchased the Class Vehicle, or would have paid less for it, had
13 Defendants not concealed the unauthorized emission control devices.

14 38. Plaintiff **Allen Taylor** (for the purpose of this paragraph, "Plaintiff"), a citizen of
15 Florida, residing in Punta Gorda, Florida, bought a 2013 Audi A6 (for the purpose this paragraph,
16 the "Class Vehicle") on or about February 13, 2013 at Jaguar Land Rover Audi of Fort Myers, in
17 Fort Myers, Florida. Plaintiff decided to buy the Class Vehicle based in part on Audi's
18 representations regarding the vehicle's emissions, fuel economy, and/or performance. At the time
19 of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by
20 emitting CO2 at levels that are greater than represented. Nor was Plaintiff aware that his Class
21 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
22 has suffered a concrete injury as a direct and proximate result of Defendants' misconduct, and
23 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
24 concealed the unauthorized emission control devices.

25 39. Plaintiff **Babu Thomas** (for the purpose of this paragraph, "Plaintiff"), a citizen of
26 Florida, residing in Port St. Lucie, Florida, purchased a 2014 Audi A8 (for the purpose this
27 paragraph, the "Class Vehicle") on or about November 14, 2013 at Audi Melbourne, in
28 Melbourne, Florida. Plaintiff decided to purchase the Class Vehicle based in part on Audi's

1 representations regarding the vehicle's emissions, fuel economy, and/or performance. At the time
2 of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by
3 emitting CO2 at levels that are greater than represented. Nor was Plaintiff aware that his Class
4 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
5 has suffered a concrete injury as a direct and proximate result of Defendants' misconduct, and
6 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
7 concealed the unauthorized emission control devices.

8 40. Plaintiff **Frank Edwin Thompson** (for the purpose of this paragraph, "Plaintiff"),
9 a citizen of California, residing in Oakland, California, bought a 2014 Audi Q5 (for the purpose
10 this paragraph, the "Class Vehicle") on or about December 29, 2013 at Audi of Oakland, in
11 Oakland, California. Plaintiff decided to buy the Class Vehicle based in part on Audi's
12 representations regarding the vehicle's emissions, fuel economy, and/or performance. At the time
13 of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by
14 emitting CO2 at levels that are greater than represented. Nor was Plaintiff aware that his Class
15 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
16 has suffered a concrete injury as a direct and proximate result of Defendants' misconduct, and
17 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
18 concealed the unauthorized emission control devices.

19 41. Plaintiff **Patricia Vance** (for the purpose of this paragraph, "Plaintiff"), a citizen
20 of Colorado, residing in Alamosa, Colorado, bought a 2013 Audi A6 (for the purpose this
21 paragraph, the "Class Vehicle") on or about March 13, 2013 at Phil Long Audi, in Colorado
22 Springs, Colorado. Plaintiff decided to buy the Class Vehicle based in part on Audi's
23 representations regarding the vehicle's emissions, fuel economy, and/or performance. At the time
24 of purchase, Plaintiff did not know that the Class Vehicle could perform as advertised only by
25 emitting CO2 at levels that are greater than represented. Nor was Plaintiff aware that her Class
26 Vehicle was equipped with undisclosed and/or unauthorized emission control devices. Plaintiff
27 has suffered a concrete injury as a direct and proximate result of Defendants' misconduct, and
28

1 would not have purchased the Class Vehicle, or would have paid less for it, had Defendants not
 2 concealed the unauthorized emission control devices.

3 42. Plaintiff **Geert Wenes** (for the purpose of this paragraph, “Plaintiff”), a citizen of
 4 New Mexico, residing in Santa Fe, New Mexico, bought a 2013 Audi Q5 (for the purpose this
 5 paragraph, the “Class Vehicle”) on or about April 3, 2013 at Audi/Mercedes-Benz/Porsche of
 6 Albuquerque, in Albuquerque, New Mexico. Plaintiff decided to buy the Class Vehicle based in
 7 part on Audi’s representations regarding the vehicle’s emissions, fuel economy, and/or
 8 performance. At the time of purchase, Plaintiff did not know that the Class Vehicle could
 9 perform as advertised only by emitting CO2 at levels that are greater than represented. Nor was
 10 Plaintiff aware that his Class Vehicle was equipped with undisclosed and/or unauthorized
 11 emission control devices. Plaintiff has suffered a concrete injury as a direct and proximate result
 12 of Defendants’ misconduct, and would not have purchased the Class Vehicle, or would have paid
 13 less for it, had Defendants not concealed the unauthorized emission control devices.

14 **B. Defendants**

15 43. **Audi AG** (“Audi AG”) is a German corporation with its principal place of
 16 business in Ingolstadt, Germany. Audi AG is the parent of Audi of America, LLC and a
 17 subsidiary of the Audi Group, which is a wholly-owned subsidiary of VW AG. Audi AG
 18 designs, develops, manufacturers, and sells luxury automobiles. According to Audi AG, the Audi
 19 Group sold 1.74 million cars worldwide in 2014, with sales revenues in 2014 totaling €3.8
 20 billion (approximately \$58.5 billion). Audi AG’s operating profit in fiscal year 2014 was €1.15
 21 billion (approximately \$5.63 billion).

22 44. Audi AG engineered, designed, developed, manufactured and installed the defeat
 23 device software on the Class Vehicles and exported these vehicles with the knowledge and
 24 understanding that they would be sold throughout the United States. Audi AG also developed,
 25 reviewed, and approved the marketing and advertising campaigns designed to sell the Class
 26 Vehicles.

27 45. **Audi of America, LLC** (“Audi America”) is a Delaware limited liability company
 28 with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia

20171. Audi America is a wholly-owned U.S. subsidiary of Audi AG, and it engages in business, including the advertising, marketing and sale of Audi automobiles, in all 50 states.

46. **Volkswagen AG** (“VW AG”) is a German corporation with its principal place of business in Wolfsburg, Germany. VW AG is one of the largest automobile manufacturers in the world, and is in the business of designing, developing, manufacturing, and selling automobiles. VW AG is the parent corporation of VW America and Audi AG. According to VW AG, it sold 10.14 million cars worldwide in 2014 – including 6.12 million VW-branded cars, 1.74 million Audi-Branded cars. Combined with other brands, VW AG boasts a 12.9% share of the worldwide passenger car market. VW AG’s sales revenue in 2014 totaled €202 billion (approximately \$221 billion) and sales revenue in 2013 totaled €197 billion (approximately \$215 billion). At €2.7 billion (approximately \$13.9 billion), VW AG generated its highest ever operating profit in fiscal year 2014, beating the previous record set in 2013 by €1.0 billion (approximately \$1.1 billion).

47. VW AG engineered, designed, developed, manufactured, and installed the defeat device software on the Class Vehicles and exported these vehicles with the knowledge and understanding that they would be sold throughout the United States. On information and belief, VW AG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell the Class Vehicles.

48. **Volkswagen Group of America, Inc.** (“VW America”) is a New Jersey corporation with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VW America is a wholly-owned subsidiary of Volkswagen AG, and it engages in business, including the advertising, marketing and sale of Volkswagen automobiles, in all 50 states. In 2014 alone, VW America sold 552,729 vehicles from its 1,018 dealer locations in all 50 states.

49. **Robert Bosch GmbH** (“Bosch GmbH”) is a German multinational engineering and electronics company headquartered in Gerlingen, Germany. Bosch GmbH is the parent company of Robert Bosch LLC. Bosch GmbH, directly and/or through its North-American subsidiary Robert Bosch LLC, at all material times, designed, manufactured, developed, tailored,

1 reviewed, approved, and supplied elements of the defeat device to Volkswagen and Audi for use
 2 in the Class Vehicles. Bosch GmbH is subject to the personal jurisdiction of this Court because it
 3 has availed itself of the laws of the United States through its management and control over Bosch,
 4 LLC, and over the design, development, manufacture, distribution, testing, and sale of hundreds
 5 of thousands of the defeat devices installed in the Class Vehicles sold or leased in the U.S.

6 50. **Robert Bosch LLC** (“Bosch LLC”) is a Delaware limited liability company with
 7 its principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan
 8 48331. Bosch LLC is a wholly-owned subsidiary of Bosch GmbH, which wholly owns and
 9 controls Bosch LLC. At all material times, Bosch LLC, directly and/or in conjunction with its
 10 parent Bosch GmbH, designed, manufactured, developed, tailored, reviewed, approved, and
 11 supplied elements of the defeat device to Volkswagen and Audi for use in the Class Vehicles.

12 51. Both Bosch GmbH and Bosch LLC (together, “Bosch”) operate under the
 13 umbrella of the Bosch Group, which encompasses some 340 subsidiaries and companies. The
 14 Bosch Group is divided into four business sectors: Mobility Solutions (formerly Automotive
 15 Technology), Industrial Technology, Consumer Goods, and Energy and Building Technology.
 16 Bosch’s sectors and divisions are grouped not by location, but by subject matter. The Mobility
 17 Solutions sector, which supplies parts to the automotive industry, is particularly at issue here and
 18 includes the relevant individuals at both Bosch GmbH and Bosch LLC. Regardless of whether an
 19 individual works for Bosch in Germany or the U.S., the individual holds him or herself out as
 20 working for Bosch. This collective identity is captured by Bosch’s mission statement: “We are
 21 Bosch,” a unifying principle that links each entity and person within the Bosch Group.²

22 52. From at least 2005 to 2015, Robert Bosch GmbH, Robert Bosch LLC and
 23 currently unnamed Bosch employees were knowing and active participants in the creation,
 24 development, marketing, and sale of illegal defeat devices specifically designed to evade U.S.
 25 emissions requirements in vehicles sold in the United States. Bosch engaged in developing the
 26 defeat device that was used in Audi, Volkswagen, Porsche, and Mercedes vehicles to evade

27 ² Bosch 2014 Annual Report: “Experiencing quality of life,” available at
 28 http://www.bosch.com/en/com/bosch_group/bosch_figures/publications/archive/archive-cg12.php.

United States emissions standards. Bosch participated not just in the development of the defeat device, but in the scheme to prevent U.S. regulators from uncovering the device's true functionality. Moreover, Bosch's participation was not limited to engineering the defeat device. Rather, Bosch marketed "Clean Diesel" in the United States and lobbied U.S. regulators to approve "Clean Diesel," another highly unusual activity for a mere supplier. Bosch was a knowing and active participant in a massive, decade-long conspiracy with Audi, and others to defraud U.S. consumers and regulators.

C. Non-Party Participants

53. **Zahnradfabrik Friedrichshafen Aktiengesellschaft** ("ZF AG" or "ZF Friedrichshafen") is a German auto part manufacturer specializing in research, development, and engineering for the automotive industry. ZF AG developed the transmission in the Class Vehicles to be driven in "low rev" mode, which was used to cheat on emissions testing programs. Audi refers to this transmission as the AL551; ZF AG refers to it as the 8HP-55AF. This transmission was used on both the tiptronic and biturbo gasoline vehicles, which were controlled by the CO₂ defeat device software to shift earlier, which consequently affected the vehicle's fuel consumption and carbon emissions. ZF AG has also worked closely with Robert Bosch GmbH, and held 50% of ZF Lenksysteme GmbH in a joint venture with Robert Bosch GmbH. Bosch GmbH acquired ZF AG's share of ZF Lenksysteme GmbH on January 30, 2015, which is now known as Robert Bosch Automotive Steering GmbH.

54. **ZF North America, Inc.** ("ZF America") was established in 1979 in Northville, Michigan and operates as a subsidiary of ZF. ZF AG boasts that "North America has become one of ZF's most important markets; since 2009 alone, ZF has more than tripled its sales in North America."³

55. ZF AG and ZF America are collectively referred to herein as "ZF."

56. **IAV GmbH** is a privately held engineering company that is headquartered in Berlin, Germany, and is the parent corporation of IAV-Automotive Engineering, Inc. The

³ *ZF in North America a Long Tradition*, https://www.zf.com/corporate/en_de/magazine/magazin_artikel_viewpage_22069481.html.

1 company specializes in powertrain, electronic, and vehicle development, and has at least three
 2 offices and one subsidiary in the United States. Defendants Audi, Bosch, and Volkswagen are
 3 clients of IAV GmbH, and Volkswagen AG holds a 50% ownership share of IAV GmbH.⁴

4 57. **IAV Automotive Engineering, Inc.** (“IAV-AE”) is a Michigan corporation with
 5 its principal place of business in Northville, Michigan. IAV-AE is a United States subsidiary of
 6 IAV GmbH. Defendants Audi, Bosch, and Volkswagen are clients of IAV-AE.

7 58. IAV GmbH and IAV-AE are collectively referred to herein as “IAV.”

8 59. **Continental AG** (“Continental”) is a manufacturing company specializing in
 9 automotive parts headquartered in Hanover, Germany. Continental manufactures numerous
 10 automotive parts including tires, powertrain and chassis components, electronics, and brake
 11 systems. It also owns several corporate subsidiaries, including Continental Automotive Systems,
 12 US, Inc. (“CAS”), which and operates the American arm of Continental’s automotive electronics
 13 and powertrain business and is headquartered in Auburn Hills, Michigan. Continental also
 14 develops and supplies engine management systems and other automotive electronics through its
 15 VDO brand, which it acquired from Siemens AG in 2007. Certain Class Vehicles use Continental
 16 or VDO engine management systems.

17 **IV. JURISDICTION AND VENUE**

18 60. This Court has jurisdiction over this action pursuant to the Class Action Fairness
 19 Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship
 20 from one Defendant, there are more than 100 Class members, and the aggregate amount in
 21 controversy exceeds \$5 million, exclusive of interest and costs. Subject-matter jurisdiction also
 22 arises under 28 U.S.C. § 1331 based upon the federal RICO claims asserted under 18 U.S.C.
 23 § 1961, *et seq.* and the Magnuson-Moss Warranty Act claims asserted under 15 U.S.C. § 2301, *et*
 24 *seq.* The Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §§ 1965(b) and
 25 (d), and Cal. Code Civ. P. § 410.10, and supplemental jurisdiction over the state-law claims
 26 pursuant to 28 U.S.C. § 1367.

27
 28 ⁴ The other entities that own IAV GmbH and their respective shares are as follows: Continental
 Automotive GmbH (20%), Freudenberg & Co. KG (10%), Schaeffler Technologies AG & Co.
 KG (10%), and SABIC Innovative Plastics B.C. (10%).

61. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events and/or omissions giving rise to the claims occurred in this District, and because Defendants have caused harm to Class members residing in this District. Defendants have marketed, advertised, sold and leased the Class Vehicles from Audi dealers located in this District. Several named Plaintiffs and proposed Class representatives, as well as tens of thousands of Class members, purchased their Class Vehicles from the multiple Audi dealers located in this District. Further, CARB maintains a significant presence in this District through its Bay Area Air Quality Management District branch. CARB played an important initial role in investigating and, ultimately, in revealing Volkswagen's illegal use of the defeat devices.

V. INTRADISTRICT ASSIGNMENT

62. This action is properly assigned to the San Francisco Division of this District pursuant to N.D. Cal. L.R. 3-2, because a substantial part of the events or omissions giving rise to Plaintiffs' claims arose in the counties served by the San Francisco Division. Several named Plaintiffs and proposed Class representatives, as well as thousands of Class members, purchased and maintain their Class Vehicles in the counties served by this Division. Moreover, Volkswagen and Audi conduct substantial business in the counties served by this Division, has marketed, advertised, sold and leased the Class Vehicles in those counties, and has caused harm to Class members residing in those counties. Finally, this Consolidated Consumer Class Action Complaint is being filed as an original action in this District and as the Consolidated Consumer Class Action in the MDL No. 2672 proceedings, which have been consolidated before Judge Charles R. Breyer, presiding in the San Francisco Division of this District.

VI. FACTS COMMON TO ALL COUNTS

63. This case concerns defeat devices in certain Audi gasoline vehicles that were used to evade emissions requirements. This device is referred to herein as the "CO₂ defeat device" to distinguish it from the "NO_x defeat device" that was the subject of the "Dieselgate" scandal, although it does more than just limit CO₂ emissions. The commonalities between the CO₂ defeat device and Volkswagen's well-known diesel NO_x defeat device are unmistakable. The primary trigger for the CO₂ defeat device—a sensor for steering wheel rotation angle—is very similar to,

1 if not the same as, one of the calibrations used in the NO_x defeat device. The CO₂ defeat device is
 2 cut from the same cloth as the NO_x device, shares the same origins, and was created and
 3 developed by many of the same actors. It reflects the same results-driven, unethical corporate
 4 culture and the same disregard for consumers, regulators, and the environment.

5 **A. The Defendants' Defeat Device Scheme**

6 64. The story of the Volkswagen and Audi defeat devices begins at Audi in the late
 7 1990s. As the New York Attorney General has alleged, in 1999, Audi engineers developing a 3.0-
 8 liter diesel engine for Audi models to be sold in Europe solved a noise problem by injecting
 9 additional fuel into the engine on ignition. But as a result, the engine could not meet European
 10 emissions standards during testing. To solve this problem, Audi tasked Bosch with developing
 11 software that could recognize when the car was being tested and deactivate the fuel injection
 12 function during testing, then reactivate it during normal driving conditions. Because the defeat
 13 device software was related to the goal of reducing engine noise, it became known in German as
 14 the "Akustikfunktion."

15 65. In 2000, the EPA announced stricter emission standards requiring all diesel models
 16 starting in 2007 to produce drastically less NO_x than years prior. NO_x is a generic term for the
 17 mono-nitrogen oxides produced during combustion. NO_x is produced by the burning of all fossil
 18 fuels, but is particularly difficult to control from the burning of diesel fuel. NO_x is a toxic
 19 pollutant, which produces smog and a litany of environmental and health problems.

20 66. These strict emission standards posed a serious challenge to Volkswagen's
 21 engineers and a major impediment to Volkswagen's goal to expand its market share in the U.S.
 22 by introducing economical and "clean" diesel cars. In fact, during a 2007 demonstration in San
 23 Francisco, engine R&D chief Wolfgang Hatz lamented presciently that "[Volkswagen] can do
 24 quite a bit and we will do a bit, but 'impossible' we cannot do. . . . From my point of view, the
 25 CARB is not realistic . . . I see it as nearly impossible for [Volkswagen]."⁵

26 ⁵ Danny Hakim, *et al.*, *VW Executive Had a Pivotal Role as Car Maker Struggled With*
 27 *Emissions*, N.Y. Times (Dec. 21, 2015),
 28 <http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtrref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pay>.

67. Volkswagen also needed to overcome the stigmas associated with diesel vehicles. Foremost among these was the consumer perception that diesel engines emit toxic smoke full of noxious pollutants. Volkswagen claimed to have solved all the environmental problems with its new engines, which it aggressively marketed as the clean, green alternative to hybrid engines, such as those in the Toyota Prius. Behind the scenes, however, Volkswagen realized that it was impossible to roll out these so-called “clean” diesel vehicles within its self-imposed budgets and engineering constraints.

68. Volkswagen engineers had to find a solution to the “impossible” problem of passing stricter emission standards while maintaining performance and fuel efficiency, all while hamstrung by cost-cutting measures. When it became clear that the 2.0-liter TDI engine being developed for the U.S. market could not meet U.S. emission regulations, and initial emission testing failed, the launch of the Jetta TDI “clean” diesel, initially scheduled for 2007, had to be delayed.⁶ The prospect of failure was unacceptable, so Volkswagen decided to cheat instead. Starting in the mid-2000s, Volkswagen engineers, working with Bosch—as detailed further below—and with the knowledge of management, adapted Audi’s “Akustikfunktion” concept to the 2.0-liter and 3.0-liter diesel engines for Volkswagen, Audi, and Porsche models to be sold in the U.S. It has been reported that the decision to cheat the EPA, CARB, and countless other regulators worldwide was an “open secret” in Volkswagen’s engine development department,⁷ as it was necessary for the “engine to pass U.S. diesel emissions limits within the budget and time frame allotted.”⁸ The resulting defeat device was incorporated into the software required to operate the 2.0-liter and 3.0-liter TDI engines sold in the U.S.

69. At least twenty Bosch engineers worked on the code for a new Engine Control Unit (“ECU”) that could accommodate sophisticated defeat device software. By 2004, Bosch and

⁶ *VW delays Jetta TDI diesel into the US*, Clean MPG (last visited Feb. 8, 2016), <http://www.cleanmpg.com/community/index.php?threads/7254/>.

⁷ Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>.

⁸ Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules’*, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules>.

1 Volkswagen had entered into preliminary agreements for further development of this ECU. At a
 2 November 20, 2006, meeting, Volkswagen reportedly decided to use a defeat device to “pass”
 3 new emission certification standards for oxides of nitrogen that would soon go into effect in the
 4 United States.

5 70. The new ECU was called the EDC17. Bosch introduced the “New Bosch EDC17
 6 engine management system” on February 26, 2008 as the “brain of diesel injection,” which
 7 “controls every parameter that is important for effective, low-emission combustion.” The EDC17
 8 offered “[e]ffective control of combustion” and a “[c]oncept tailored for all vehicle classes and
 9 markets.” In the press release, Bosch touted the EDC17 as follows:

10 **EDC17: Ready for future demands**

11 Because the computing power and functional scope of the new
 12 EDC17 can be adapted to match particular requirements, it can be
 13 used very flexibly in any vehicle segment on all the world’s
 14 markets. In addition to controlling the precise timing and quantity
 15 of injection, exhaust gas recirculation, and manifold pressure
 16 regulation, it also offers a large number of options such as the
 17 control of particulate filters or systems for reducing nitrogen
 oxides. The Bosch EDC17 determines the injection parameters for
 each cylinder, making specific adaptations if necessary. This
 improves the precision of injection throughout the vehicle’s entire
 service life. The system therefore makes an important contribution
 to observing future exhaust gas emission limits.⁹

18 71. This sophisticated, programmable system, integrated with numerous sensors
 19 throughout the car, enabled developers to integrate various operation modes based on sensor
 20 inputs. These modes, if an unethical carmaker so desired, could be used to detect parameters
 21 consistent with emissions testing, and defeat the tests by changing the functionality of the car’s
 22 systems to pass the tests, while operating differently during normal operations. For example,
 23 when undergoing test cycles, the ECU could change the functionality of emissions systems (such
 24 as regeneration of catalysts, or injection of exhaust aftertreatment fluid) to ensure that emissions
 25 levels stayed low enough to pass the test, potentially at the cost of lessened performance or
 26 worsened fuel economy that would be unacceptable or undesirable in normal operation. In normal

27 ⁹ See Feb. 28, 2006 Bosch press release, “The brain of diesel injection: New Bosch EDC17
 28 engine management system,”
<http://www.boschpresse.de/presseforum/details.htm?txtID=2603&locale=en>.

operation, the car would operate in a mode that maximized performance or fuel economy, or lengthened service intervals by simply not injecting exhaust aftertreatment fluid, at the cost of significantly increased pollution. This, of course, is exactly what Volkswagen, Audi, and Porsche did with NOx in their diesel vehicles. In particular, one of the variables consistent with test cycles but not with normal operation was steering wheel angle: in a laboratory test, the steering wheel is not turned, while in normal driving, of course, the wheel is frequently turned. The signal from the steering wheel could thus be used as a trigger to switch between two different modes: one for emissions tests and one for normal driving.

72. Bosch's ECU technology provided the means to satisfy Volkswagen and its subsidiaries' ambition to bring fuel-efficient diesel cars that consumers would actually want to drive to the United States, but without having to engineer cars that actually complied with the EPA's stringent emissions standards for NOx. The EDC17 and the development of its defeat device software were integral to Volkswagen's diesel strategy. This could not have been accomplished without years of collaborative work with Bosch.

73. [REDACTED]

[REDACTED]¹⁰ [REDACTED]
[REDACTED] Shortly after the cheating scandal became public, Volkswagen suspended Hackenberg, and he later resigned.¹¹

74. Bosch made clear that the EDC17 was not one-size-fits-all part. Instead, it was a "[c]oncept tailored for all vehicle classes and markets" that could "be adapted to match particular requirements [and] ... be used very flexibly in any vehicle segment on all the world's markets."

¹⁰ [REDACTED]

¹¹ Jack Ewing, Audi Executive Resigns After Suspension over VW Emissions Scandal, NY Times (Dec. 4, 2015), <https://www.nytimes.com/2015/12/05/business/international/ulrich-hackenberg-suspended-over-volkswagen-emissions-scandal-resigns.html>.

1 The EDC17 was tailored and adapted for each carmaker who used it by modifying the
2 sophisticated software embedded within the ECU, including Volkswagen and Audi.

3 75. Bosch, Volkswagen, and Audi therefore worked together closely to modify the
4 software and to create specifications for each vehicle model. Customizing a road-ready ECU is an
5 intensive three- to five-year endeavor involving a full-time Bosch presence at an automaker's
6 facility. Bosch and its customers work so closely that Bosch purposefully locates its component
7 part manufacturing facilities close to its carmaker customers' manufacturing plants and embeds
8 personnel within its customers' organizations.

9 76. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]¹²

16 77. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]¹³ [REDACTED]
24 [REDACTED]

25
26 ¹² [REDACTED]
27 [REDACTED]
28 ¹³ [REDACTED]

1 78. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 **B. The Audi CO₂ Defeat Device**

9 79. Discovery from the Defendants specific to the CO₂ defeat device in the gasoline
 10 vehicles at issue here has not yet occurred, but the information garnered from Plaintiffs' ongoing
 11 investigation, expert testing, and information found in public sources, including those documents
 12 made public during the *In re Clean Diesel Litigation* suggest that another defeat device scheme
 13 was implemented in Audi gasoline vehicles.

14 **1. Development of the CO₂ Defeat Device**

15 80. As discussed above, Audi conceptualized the original "Akustikfunktion" defeat
 16 device and worked with Bosch and Volkswagen as they refined an NO_x defeat device for use in
 17 diesel vehicles. But the cheating did not end there. The defeat device scheme was not limited to
 18 diesel vehicles, and the Defendants continued to work together to confront new engineering
 19 challenges through cheating and deception.

20 81. Fleetwide CO₂ standards affecting MY 2012-2015 vehicles were implemented in
 21 2011. EPA and NHTSA established fleetwide standards for both CO₂ emissions and average fuel
 22 economy. The EPA set CO₂ emissions standards for light-duty vehicles under section 202(a) of
 23 the Clean Air Act. By model year 2016, the EPA standards required light-duty vehicles to meet
 24 an estimated combined average emissions level of 250 grams/mile of CO₂. NHTSA set CAFE
 25 fleet fuel economy standards for passenger cars and light trucks under 49 U.S.C. § 32902.
 26 NHTSA's standards required manufacturers of those vehicles to meet an estimated combined
 27 average fuel economy level of 34.1 mpg by model year 2016. The standards for both agencies
 28

1 begin with the 2012 model year, with standards increasing in stringency through model year
2 2016.¹⁴ New, even more stringent CO₂ standards went into effect for model year 2017.¹⁵

3 82. Defendants knew that to sell the Class Vehicles in the United States, the vehicles
4 had to meet the relevant standards.

5 83. The Clean Air Act prohibits “defeat devices,” defined as any auxiliary emission
6 control device “that reduces the effectiveness of the emission control system under conditions
7 which may reasonably be expected to be encountered in normal vehicle operation and use.”
8 40 C.F.R. § 86.1803-01; *see also* 40 C.F.R. § 86.1809-10 (“No new light-duty vehicle, light-duty
9 truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a
10 defeat device.”). Moreover, the CAA prohibits the sale of components used as defeat devices
11 “where the person knows or should know that such part or component is being offered for sale or
12 installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3). Finally, in order to obtain a
13 COC, automakers must submit an application that lists all auxiliary emission control devices
14 installed in the vehicle, a justification for each, and an explanation of why the control device is
15 not a defeat device.

16 84. Revelations about the CO₂ defeat device are still unfolding, but it is clear that Audi
17 began its deception by 2013 at the latest. In 1990, Rupert Stadler joined Audi AG, assuming
18 various roles at Audi and Volkswagen as he ascended the ranks within the Volkswagen Group.
19 On January 1, 2010, he was appointed CEO of Audi AG, which he remains to present day. As the
20 CEO of Audi AG, Stadler was tasked with implementing lofty growth goals, as well as
21 overseeing the development of the “clean” diesel engines in Audi vehicles. Stadler’s growth goals
22 included sales of Audi gasoline sales in the United States.

23 85. Audi was aware that emissions and fuel consumption are decisive factors for
24 customers making vehicle purchase decisions. To that end, Audi began to mislead consumers by
25 representing its vehicles as consuming less fuel and emitting less CO₂ and other pollutants than
26 they actually do in normal driving conditions.

27 ¹⁴ <https://www.gpo.gov/fdsys/pkg/FR-2010-05-07/pdf/2010-8159.pdf>, p.8.

28 ¹⁵ <http://www.eesi.org/papers/view/fact-sheet-vehicle-efficiency-and-emissions-standards#1>

86. Audi was able to disguise this deception by programming its vehicles with the ability to engage different modes, one of which used significantly less fuel and emitted significantly less pollutants, but also delivered significantly less power. This low power mode, also known as the “low CO₂” program, works by causing the Class Vehicles to shift gears early to maintain artificially low engine speed (typically measured in revolutions per minute, or RPM) and emissions. Audi deceptively dubbed this the “warm-up” strategy, a mode that activates when the Class Vehicles are started. As long as the “warm-up” function remains activated, the automatic transmission remains in a “switching program” that produces a low engine speed, consumes less fuel, and produces less CO₂ and other pollutants.

87. In February 2013, Audi tested its cars in the “SummerFahrt,” or Summer Drive, in South Africa. The final report reflected that the shift quality and issues at the start were noticeable. It was in this report that Audi engineer Axel Eiser made his now-notorious comment that the cycle-optimized “shifting program” was to be set to operate 100% when being tested, and be noticeable only .01% of the time when driven normally.¹⁶

88. [REDACTED]

[REDACTED]¹⁷

89. The defeat device software is embedded in the Transmission Control Module (“TCM”). The TCM’s primary function is to establish shift logic by reacting to signals from sensors monitoring coolant temperature, exhaust temperature, ignition timing, crankshaft and camshaft positioning, fuel mixture and air flow volumes. The TCM and engine control unit (“ECU”) work in tandem to execute the actual cheat function. The engineers embedded the cheat software in the TCM unit, intentionally making its detection less probable.

90. Audi engineers figured out how to activate this low fuel, low emissions, low power “warm-up” mode during emissions tests. They discovered that only time the Class Vehicles would run continuously with no steering wheel input would be when the vehicles were

¹⁶ Kayhan Oezgenc and Jan C. Wehmeyer, “This is How the Manufacturer Cheated on CO₂,” *Bild am Sonntag* (November 5, 2016) <http://www.bild.de/bild-plus/auto/auto-news/audi/so-schummelte-der-hersteller-bei-co-48621300.bild.html>.

¹⁷ [REDACTED]

1 undergoing examination in a lab, on a dynamometer. When sensors detect these lab conditions,
2 the vehicles' TCM set "shift points"—the engine speeds at which the transmission shifts up to the
3 next gear—that allow the vehicles to produce compliant emission results under those conditions
4 (known by Audi as the "dyno calibration" mode). Thus, on a dynamometer, where the steering
5 wheel is never turned, the defeat device enables the Class Vehicles to operate in this low power
6 mode.

7 91. At *all other times*—that is, when the Class Vehicles are actually driving under
8 normal conditions—the transmission computer switches to "road calibration" mode, which offers
9 full power to the driver, and which results in increased fuel consumption and greater emissions.
10 Indeed, the road calibration mode activates once the driver turns the steering wheel 15 degrees,
11 something that happens almost immediately under nearly all normal driving conditions.

12 92. This defeat device scheme allowed Defendants to deceptively misrepresent the
13 Class Vehicles' fuel consumption and emissions to governmental authorities and to the public. A
14 vehicle's advertised fuel economy, which is listed on the "Monroney sticker," or window sticker,
15 is determined by driving a vehicle over five standardized driving patterns (or drive cycles), all of
16 which are performed in a laboratory on a dynamometer where the conditions for all tests can be
17 controlled. These driving cycles include cold starts, hot starts, highway driving, aggressive and
18 high speed driving, driving with the air conditioner in use under conditions similar to a hot day in
19 the summer in Los Angeles and driving in cold temperatures. Data from the five drive cycles are
20 combined and adjusted for "real world" conditions to represent "City" driving and "Highway"
21 driving. The "combined" fuel economy is the average of the City and Highway values with
22 weights of 55% and 45% respectively. These adjusted and combined values appear on the
23 vehicle's Monroney sticker.

24 93. During each of the drive cycles—all of which are performed in a lab, under the
25 Class Vehicles' low power, low emissions, low fuel consumption mode—the amount of each
26 pollutant is measured. This includes un-combusted or partially combusted gasoline (hydrocarbons
27 or HC), carbon monoxide (CO), and carbon dioxide (CO₂). The amount of carbon produced is
28 then converted to the amount of gasoline which was required to produce the carbon in the

1 exhaust. The amount of gasoline used during the tests is divided into the distance driven on the
2 test to calculate the fuel economy.

3 94. Based on this equation, as the amount of CO₂ produced increases, the gasoline
4 used increases and the fuel economy decreases. Therefore, if a Class Vehicle produced less CO₂
5 during laboratory testing, but higher CO₂ when driven on road, the vehicle would have better
6 estimated fuel economy represented on the Monroney sticker than the vehicle would actually
7 achieve on the road.

8 95. That is exactly what happened here. The defeat device program equips the Class
9 Vehicles with two modes. The “dyno calibration” mode reduces fuel supply and limits
10 revolutions per minute (“RPMs”) per gear, resulting in reduced performance but also reducing
11 fuel consumption and lowering emissions. This mode was engaged during all of the laboratory
12 testing used to calculate the Class Vehicles’ purported fuel economy. In contrast, the “road
13 calibration” allows the engine to turn higher RPMs in each gear, and provides the necessary (and
14 much higher) fuel supply required to deliver advertised torque and performance. This is the mode
15 engaged during normal driving.

16 96. Audi installed the defeat device in the vehicles equipped with a certain 8-speed
17 automatic transmission through May 2016.¹⁸ The AL 551 transmission is supplied by ZF
18 Friedrichshafen, commonly known as ZF. The gasoline vehicles that Audi equipped with the AL
19 551—and, therefore, with the defeat device—include, but may not be limited to, the Audi A6, A7,
20 A8, and Q5 models.¹⁹

21 97. There is no reasonable question that Audi knew what it was doing. Audi
22 commissioned its own study, in fact, which found that a vehicles’ fuel consumption on the road
23 increased by 8.5 percent after the wheel was turned.

24
25 ¹⁸ Bertel Schmitt, “CARB Finds New Audi Defeat Device, German Newspaper Digs Up Smoking
26 Gun Document,” *Forbes* (November 6, 2016)
27 <https://www.forbes.com/sites/bertelschmitt/2016/11/06/carb-finds-new-audi-defeat-device-german-paper-digs-up-smoking-gun-document/#58bd6d634d84>.

28 ¹⁹ *New Accusation of Cheating Against Audi*, Handelsblatt (November 13, 2016)
<http://www.handelsblatt.com/unternehmen/industrie/manipulation-der-co2-werte-neueschummelvorwuerfe-gegen-audi/14835360.html>.

1 98. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 99. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 100. Thus, having made the decision to use shift points to improve fuel economy and
27 comply with fleetwide CO₂ emissions standards to be allowed to sell cars in the United States at
28 all, Audi found that the resulting driving experience was unacceptable in light of its advertised

1 emphasis on performance, and so it opted to conceal the low-power mode from the consumer and
 2 make it active, in effect, only when the vehicles were undergoing emissions testing—when the
 3 steering wheel is not turned. Audi executives were aware of the risk that consumers would
 4 complain about the discrepancy between advertised fuel economy achieved during certification
 5 testing and what they would experience in the real world but nonetheless elected to conceal the
 6 “low-power” mode from consumers and regulators alike.

7 101. [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 2. The Discovery of the CO₂ Defeat Device

12 102. In late 2015 or early 2016, German authorities—namely, the German Motor
 13 Transportation Authority (“KBA”)—detected irregularities and increased CO₂ emissions in Audi
 14 vehicles and questioned Audi about these results. Reports indicate that Audi lied to the KBA,
 15 however, telling them that their vehicles would not contain software allowing them to detect
 16 dynamometer testing and alter the vehicles’ performance as a result. Audi instead pointed to a
 17 number of factors that could have distorted the measurement results.²⁰

18 103. The Audi CO₂ defeat device was first publicly disclosed on November 5, 2016.²¹
 19 According to reports, “Certain Audi models have been able to distinguish whether they are on a
 20 roller stand or on the road using the so-called steering angle detection. If the steering wheel is not
 21 moved after the start, a shift program activates itself in automatic gearboxes...if the driver turns
 22 the steering wheel, this ‘warm-up strategy’ is deactivated. The vehicle then runs with a different
 23

24 ²⁰ Carsten Rehder, “Examiners Measure Excessive CO₂-Values for Many Car Models,” *Bild*,
 25 (November 13, 2016) <http://www.bild.de/geld/aktuelles/wirtschaft/pruefer-messen-bei-vielen-automodellen-ueberhoehte-48744426.bild.html>; “Ministry of Transportation Examines
 26 Accusations Against Audi,” *Handelsblatt* (November 7, 2016),
 27 <http://www.handelsblatt.com/politik/deutschland/abgaswertemanipulation-verkehrsministerium-prueft-vorwuerfe-gegen-audi/14804236.html>

28 ²¹ “CARB Finds New Audi Defect Device, German Paper Digs Up Smoking Gun Document,”
Forbes, (November 6, 2016), <http://www.forbes.com/sites/bertelschmitt/2016/11/06/carb-finds-new-audi-defeat-device-german-paper-digs-up-smoking-gun-document/#40762ecf1ce8>

1 shifting program that uses more fuel and CO₂.”²² This allows vehicles to operate at higher
 2 revolutions per minute such that the vehicle has more power and acceleration, but consumes
 3 more fuel and emits more carbon dioxide on the road than testing revealed.

4 104. Based on these revelations, German authorities renewed their investigations.²³

5 105. Audi executives were on notice of the potential for CO₂ emissions manipulation
 6 well before the Audi CO₂ defeat device was publicized. Following the public revelation of the
 7 NOx defeat device in the “Clean Diesel” vehicles in September 2015 by CARB and EPA, another
 8 investigation began to unfold, this one relating to CO₂. In November 2015, new Volkswagen
 9 CEO Matthias Müller announced that internal investigations had identified irregularities in CO₂
 10 levels, and that around 800,000 Group vehicles could be affected.²⁴ Volkswagen did not
 11 specifically identify the vehicles, but stated in relevant part: “...during the course of internal
 12 investigations irregularities were found when determining type approval CO₂ levels. Based on
 13 present knowledge around 800,000 vehicles from the Volkswagen Group could be affected. An
 14 initial estimate puts the economic risks at approximately two billion euros. The Board of
 15 Management of AG will immediately start a dialogue with the responsible type approval agencies
 16 regarding the consequences of these findings.”

17 106. In December 2015, in a statement to investors, Mueller changed course, reporting
 18 that VW had in fact made a mistake and that there was no such scandal.²⁵ Volkswagen announced
 19 that “[t]he suspicion that fuel consumption figures of current production vehicles had been
 20 unlawfully changed was not confirmed...*These cars can be offered for sale by dealers without*
 21 *any reservations.*”²⁶

22
 23
 24 ²² “New allegations against Audi in exhaust affair,” *Bild*, (November 11, 2016).

25 ²³ Kayhan Oezgenc and Jan C. Wehmeyer, “This is How the Manufacturer Cheated on CO₂,” *Bild*
 26 *am Sonntag* (November 5, 2016) [http://www.bild.de/bild-plus/auto/auto-news/audi/so-](http://www.bild.de/bild-plus/auto/auto-news/audi/so-schummelte-der-hersteller-bei-co-48621300.bild.html)
 27 [schummelte-der-hersteller-bei-co-48621300.bild.html](http://www.bild.de/bild-plus/auto/auto-news/audi/so-schummelte-der-hersteller-bei-co-48621300.bild.html).

28 ²⁴ “Volkswagen Press Release, “Clarification moving forward: internal investigations at
 Volkswagen identify irregularities in CO₂ levels.” November 3, 2015.

²⁵ <https://www.youtube.com/watch?v=h9Q9vIzJrVQ>.

²⁶ [https://www.cnet.com/roadshow/news/volkswagen-drops-carbon-dioxide-issue-uncovers-no-](https://www.cnet.com/roadshow/news/volkswagen-drops-carbon-dioxide-issue-uncovers-no-illegal-wrongdoing/)
[illegal-wrongdoing/](https://www.cnet.com/roadshow/news/volkswagen-drops-carbon-dioxide-issue-uncovers-no-illegal-wrongdoing/) (Emphasis added).

1 107. More than half a year later, European officials questioned Volkswagen about
2 carbon emissions.²⁷ Even then, Defendants continued to deny a problem. At no point in time did
3 Defendants inform the public or Class members that they had obtained the COCs and EOs
4 through the use of a CO₂ defeat device, or that its emissions and fuel efficiency representations
5 for the Class Vehicles were false.

6 108. Internal documents dating back to 2013 at Audi and Volkswagen indicate
7 executives' awareness and concern about the CO₂ defeat device—including the fact that the
8 software constituted a defeat device—and the risk of regulatory investigations.

9 109. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 110. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
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18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 111. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26
27

28 ²⁷ <http://www.wsj.com/articles/eu-still-questions-volkswagen-data-on-co2-emissions-documents-show-1464863775>

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112.

113. Additional evidence indicates that Volkswagen's now-former CEO, Martin Winterkorn, knew about the defeat device scheme. Volkswagen's former supervisory board chief, Ferdinand Piech, stated that Winterkorn knew about the diesel defeat device "well before the scandal broke." According to Piech, he asked Winterkorn about the matter, and Winterkorn assured him that U.S. authorities were not looking into whether the Company manipulated software to cheat emissions testing. Prosecutors in Germany, however, are investigating Winterkorn for fraud, believing he had sufficient knowledge of the scheme.²⁸ Winterkorn's rise within the Volkswagen group neatly bookends the defeat device scheme as a whole: he was the CEO of Volkswagen when the NOx scandal broke in 2015; in 1999, when the "Akustikfunktion" scheme was in its infancy at Audi, Winterkorn was Audi's CEO.

114. Following the revelations regarding the CO₂ defeat device, Audi reportedly suspended several unidentified "responsible engineers." However, Axel Eiser remains Head of Powertrain Development of the Volkswagen Group. Volkswagen has even relied on Eiser to interface with regulators. When Volkswagen presented to the European Parliament's Committee of Inquiry into Emissions Measurements in the Automotive Sector relating to the NOX defeat device, Eiser was among those questioned.²⁹

²⁸ <https://www.thelocal.de/20170203/did-volkswagens-ceo-know-about-emissions-cheating-all-along>

²⁹ <http://www.forbes.com/sites/bertelschmitt/2016/11/06/carb-finds-new-audi-defeat-device->

1 **3. Test Results Confirm the Existence of the CO₂ Defeat Device**

2 115. Plaintiffs' counsel have retained experts to conduct testing of the Class Vehicles.
3 This testing confirms the existence and functionality of the defeat device.

4 116. Testing was conducted to determine whether there was a difference in fuel
5 economy for certain class vehicles when tested using the federal certification tests, with and
6 without turning the vehicle wheels more than 15 degrees prior to testing. The test was designed to
7 determine if the vehicle was designed to have different shift schedules if the vehicle computer
8 believed it was being tested versus being operated on the road. The shift schedule in the default
9 mode—that is, without turning the steering wheel—would have lower average RPM, resulting in
10 lower emission rates and higher fuel economy.

11 117. “Early shifting” may result in reduced performance. However, performance is not
12 a criteria during the certification test—only emissions and fuel economy are. Because vehicles
13 emissions levels are determined during certification on a dynamometer, the vehicle is not steered,
14 as opposed to on-road operation where the vehicle must be steered. Thus, a steering wheel sensor
15 could report to the vehicle that it was likely operating in laboratory conditions. This is how
16 Volkswagen diesel vehicles could “know” to operate in a mode which had lower emissions while
17 sacrificing vehicle performance when the vehicle was being tested.

18 118. More specifically, the vehicle computers could be programmed to notice if the
19 steering wheels were turned more than 15 degrees left or right, and the vehicle was therefore not
20 being tested. This defeat strategy would result in higher performance on the road at the cost of
21 higher emission rates of pollutants into the environment.

22 119. To determine if a similar strategy was employed with the Class Vehicles,
23 Plaintiffs' experts conducted tests using standard certification test procedures for vehicle
24 preparation. The tests focused on determining if there was a difference in shift schedule that
25 caused the vehicle to operate at a lower average RPM resulting in an increase in fuel economy in
26 default mode and a higher average RPM and lower fuel economy in possible defeat mode (after
27 the wheels were turned). Setting the shift points to change from a lower gear to a higher gear
28

[german-paper-digs-up-smoking-gun-document/#40762ecf1ce8](#)

1 sooner (that is, at a lower speed or load) in one mode would cause the engine to operate at a lower
2 average RPM, achieving higher fuel economy at the cost of reduced power and torque. The tests
3 with and without turning the wheel were performed by the same driver, and both tests had
4 virtually identical average speeds.

5 120. Test results showed that in certain class vehicles, fuel economy was higher with no
6 wheel movement before testing than in testing that followed moving the steering wheel fully to
7 the right and left after engine start and just prior to the drive cycle starting, indicating that steering
8 input triggers a switch between modes. The difference in fuel economy was as high as nine
9 percent between the two modes. Average engine speed, measured in RPM, was significantly
10 lower in default mode—without turning the wheel—than in the potential defeat mode—after
11 turning the wheel—just as reported by German media. Both the decrease in fuel economy and the
12 increase in RPM when the vehicle was operated in the potential defeat mode appear to indicate
13 that the vehicle computer is commanding the use of a different shift strategy after the vehicle
14 wheels have been manipulated, which indicates the use of a defeat device.

15 121. Plaintiffs' experts tested a Class Vehicle equipped with an 8-speed ZF automatic
16 transmission. They conducted a full certification test using the Federal Test Procedure ("FTP75"),
17 the Highway Fuel Economy Test ("HWFET"), and the "US06" test cycle. The test protocol used
18 standard certification test procedures, such as using the approved fuel formulation for certification
19 tests, documenting vehicle conditioning, driving a pre-test cycle, and storing the vehicle overnight
20 at approximately 75 degrees Fahrenheit. The vehicle was tested under certification conditions
21 without turning the steering wheel before the test cycle. The vehicle was then reset for testing
22 (refueled, stored overnight, etc.) and the same set of tests performed again, this time after turning
23 the steering wheel left and right just after engine start and before conducting the drive cycle.
24 Emissions as well as engine RPM were measured during the test cycles.

25 122. The results show the existence of a defeat device that increases fuel economy
26 (reducing carbon dioxide production) when the steering wheel is not turned, and that it does so by
27 instructing the transmission to shift at lower engine speed, operating at a lower average RPM. On
28 the FTP75 test, when the steering wheel was not turned—a situation that would only ever occur

1 during laboratory testing, never during ordinary driving—average engine RPM was about 15%
2 lower, fuel economy was about 9% higher, and carbon monoxide, carbon dioxide, and NOx
3 emissions were all substantially lower than when the wheel was turned. Respectively, these
4 pollutant levels were 76.3%, 9.7%, and 162% lower when the wheel was not turned and the
5 “defeat device” mode was therefore engaged.

6 123. Some class vehicles were also “reflashed” with a software update as part of an
7 emissions recall that received regulatory approval on September 16, 2016. This recall, which
8 Audi referred to as “24CO,” applied to certain 2012-2016 Audi vehicles with 3.0-liter gasoline
9 engines—including Class Vehicles. The update was described in the recall notice as resolving a
10 software issue wherein the catalytic converter OBD diagnostic thresholds has been set “too
11 tightly”, causing the malfunction indicator (MIL) light to come on even though the catalytic
12 converter was working properly.

13 124. A number of “reflashed” class vehicles were tested on an emissions chassis
14 dynamometer and on public roads. The test procedure was consistent with the test procedure used
15 for class vehicles that did not have the approved software “reflash”: the steering wheels were
16 either held straight prior to test, or turned at least 15 degrees prior to test.

17 125. Plaintiffs’ Experts also conducted on-road testing on several 3.0L class vehicles
18 using portable emissions measurement systems (“PEMS”). One PEMS test was carried out on a
19 straight and level road, using a control feature to ensure consistent vehicle acceleration from 0
20 MPH to 50 MPH (the cruise control is enabled at 20 MPH). Vehicle speed and engine speed data
21 were collected via the OBD port, to allow determination of the gear shift points with and without
22 steering input. The test results indicated that the transmission shifted gears at lower engine speeds
23 if the vehicle was operated without steering input: for example, the shift from 5th to 6th gear was
24 observed to occur 4.5 seconds sooner, leading to an approximately 500 RPM drop in engine
25 speed. On the other hand, when the steering wheel was turned before the test, average engine
26 speed during acceleration from 0 MPH to 50 MPH increased by 11%, from 1954 RPM to 2176
27 RPM.
28

1 126. The chassis dynamometer tests were carried out on class vehicles according to the
2 procedure described by 40 C.F.R. § 1065, on a four-wheel dynamometer. The test sequence was
3 designed to evaluate the effects of steering input. The testing included FTP75, US06, SC03 and
4 HWFET test cycles. Average engine speed increased when the steering wheel was turned in
5 comparison to when it was not. The greatest increase—9.7%-11.8%—occurred on the US06 test.
6 SC03 test results showed a similar increase of engine speed when the wheel was turned—an
7 increase of 5.8-8.2%. On the cold start FTP75 test, results showed an increase of engine speed of
8 5.0% to 7.2% after turning the wheel. The HWFET test showed a smaller effect: the average
9 engine speed increased by 0.4% to 2.1% with steering input.

10 127. In all, chassis dynamometer results showed a consistent increase in average engine
11 speed, which cannot be explained as normal test-to-test variation. The same is true of on-road
12 testing. This increase in average engine speed between the vehicles' default mode—a mode likely
13 only active when undergoing emissions testing—and the mode used when in normal operation
14 appears to be caused by different transmission control modes and shift points triggered by
15 steering input.

16 **C. The Supplier Defendants' Role**

17 128. The Class Vehicles use ECUs supplied by both Bosch and Continental, and
18 transmissions supplied by ZF. On information and belief, the TCM—effectively the brains of the
19 transmission—in the Class Vehicles was developed and supplied by Bosch.

20 129. As described above, Bosch played an integral role in developing the technology
21 used in Volkswagen's and Audi's defeat device scheme. Evidence already made public makes
22 clear just how deeply involved Bosch was in this scheme and how its involvement went beyond
23 providing the technological platform used by Volkswagen and Audi to include developing the
24 actual defeat device software and even to communicating directly with regulators to mislead
25 them.

26 130. The simple fact is that it would have been impossible for Volkswagen and Audi to
27 engage in the defeat device scheme without at least some suppliers' knowledge and assistance.
28 All modern ECUs, including the EDC17 used in the NOx defeat device, run on complex, highly

1 proprietary engine management software over which suppliers exert near-total control. In fact, the
 2 software is typically locked to prevent customers from making significant changes on their own.
 3 The NOx defeat device was just such a software change—one that would allow modifications to
 4 the vehicle’s emission control to turn on only under certain circumstances—that Volkswagen
 5 could not have made without Bosch’s participation. The same is true of the similar functionality
 6 that underlies the CO₂ defeat device, which relies on the same sophisticated sensors and similar
 7 software.

8 131. Bosch’s security measures illustrate industry practices and confirm that its
 9 customers cannot make significant changes to Bosch software without Bosch involvement. Bosch
 10 boasts that its security modules protect vehicle systems against unauthorized access in every
 11 operating phase, meaning that no alteration could have been made without either a breach of that
 12 security or Bosch’s knowing participation.³⁰ On information and belief, the same is true of
 13 Continental ECU software, and of the code used in TCMs as well.

14 132. Unsurprisingly, then, at least one car company engineer has confirmed that Bosch
 15 maintains absolute control over its software as part of its regular business practices:

16 I’ve had many arguments with Bosch, and they certainly own the
 17 dataset software and let their customers tune the curves. Before
 each dataset is released it goes back to Bosch for its own validation.

18 Bosch is involved in all the development we ever do. They insist on
 19 being present at all our physical tests and they log all their own
 data, so someone somewhere at Bosch will have known what was
 20 going on.

21 All software routines have to go through the software verification
 of Bosch, and they have hundreds of milestones of verification,
 22 that’s the structure

23 The car company is *never* entitled by Bosch to do something on
 their own.³¹

26 ³⁰ *Reliable Protection for ECUs* (May 12, 2016), [https://www.escrypt.com/company/single-](https://www.escrypt.com/company/single-news/detail/reliable-protection-for-ecus/)
 27 [news/detail/reliable-protection-for-ecus/](https://www.escrypt.com/company/single-news/detail/reliable-protection-for-ecus/).

28 ³¹ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
 (Nov. 23, 2015), [https://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-](https://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/)
[software/](https://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/).

133. Thus, Bosch cannot convincingly argue that the development of the defeat devices in vehicles equipped with Bosch ECUs or TCMs was the work of rogue engineers without Bosch's knowledge or involvement.

134. Volkswagen's and Bosch's work on the EDC17 instead reflected a highly unusual degree of coordination. It was a massive project that required the work of numerous Bosch coders for a period of at least ten years, and perhaps more.³²

135. [REDACTED]

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136. The enterprise is also memorialized in a series of agreements between Bosch, Volkswagen, and Audi, dating back to mid-2005, and reflecting negotiations that date prior to January, 2005. These agreements cover both diesel and gasoline vehicles.

137. [REDACTED]

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³² Approximately 50,000 of Bosch's 375,000 employees worked in the diesel-technology operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. See Bosch Probes Whether Its Staff Helped VW's Emissions Rigging, Automotive News (Jan. 27, 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

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138.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 35 [REDACTED]

[REDACTED]

139.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 36 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 37 [REDACTED]

[REDACTED]

140.

[REDACTED]

[REDACTED]

[REDACTED]

35 [REDACTED]
36 [REDACTED]
37 [REDACTED]

1 [REDACTED]³⁸ [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 141. Rather, Bosch was in on the secret and knew that Volkswagen was using Bosch's
 9 software algorithm to operate "on/off" switch for emission controls when the Class Vehicle was
 10 undergoing testing. The decision to cheat was an "open secret" at Volkswagen, where they
 11 continued to use the "Akustikfunktion" code word for their new defeat device.³⁹ It was an "open
 12 secret" at Bosch as well.

13 142. Written communications [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]⁴⁰ [REDACTED]
 18 [REDACTED]
 19 [REDACTED]⁴¹

20 143. According to the Department of Justice indictment of Volkswagen engineer James
 21 Liang, another supplier, [REDACTED] was also involved. [REDACTED]
 22 [REDACTED]

23
 24 ³⁸ [REDACTED]
 25 ³⁹ Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*,
 26 Reuters (Jan. 23, 2016), <https://www.reuters.com/article/us-volkswagen-emissions-investigation/volkswagen-probe-finds-manipulation-was-open-secret-in-department-newspaper-idUSKCN0V02E7>; see also Jay Ramey, *VW chairman Poetsch: Company 'tolerated breaches of rules'*, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules> (it was necessary for the "EA 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted.").

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 28 ⁴⁰ [REDACTED]
⁴¹ [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED] Liang
 6 Indictment at Para. 40, <https://www.justice.gov/opa/file/890761/download>).

7 144. Bosch was concerned about getting caught participating in the defeat device fraud.
 8 As reported in the German newspaper *Bild am Sonntag* and elsewhere, a Volkswagen internal
 9 inquiry found that in 2007 Bosch warned Volkswagen by letter that using the emissions-altering
 10 software in production vehicles would constitute an “offense.”⁴²

11 145. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]⁴³ [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]

20 146. [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

25 ⁴² Automotive News (Sept. 27, 2015)
 26 ([http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-](http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-aboutillegal-software-use-in-diesel-cars-report-says)
 27 [aboutillegal-software-use-in-diesel-cars-report-says](http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-aboutillegal-software-use-in-diesel-cars-report-says)); VW Scandal: Company Warned over Test
 28 Cheating Years Ago”, BBC, Sept. 27, 2015, <http://www.bbc.com/news/business-34373637>;
[http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-aboutillegal-](http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-aboutillegal-software-use-in-diesel-cars-report-says)
[software-use-in-diesel-cars-report-says](http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-aboutillegal-software-use-in-diesel-cars-report-says)

⁴³ [REDACTED]

1 [REDACTED]⁴⁷ Volkswagen AG and Bosch continued the lengthy and
2 complicated process of refining the defeat device together in order to evade stringent U.S.
3 emissions standards.

4 151. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 152. It is likely that ZF, the manufacturer of the transmissions used to actuate the CO₂
11 defeat device, was also involved, due to its involvement in the development of the TCM and
12 programming of the “shift points” that are the means by which CO₂ emissions are reduced during
13 lab testing. Discovery is ongoing as to the role of ZF and Continental in the development of the
14 CO₂ defeat device.

15 153. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]⁴⁸

23 154. The purpose of the NO_x defeat device was to evade stringent U.S. emissions
24 standards. Once Bosch and VW perfected the defeat device, therefore, their attention turned to
25 deceiving U.S. regulators.
26
27

28 ⁴⁷ [REDACTED]

⁴⁸ [REDACTED]

1 155. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] 49

9 156. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] 50

15 157. Bosch's North American subsidiary, Bosch LLC, was also an essential player in
16 the fraud. Bosch LLC worked closely with Bosch GmbH and Volkswagen, in the United States
17 and in Germany, to ensure that the vehicles equipped with defeat devices passed U.S. emission
18 tests. As set forth below, Bosch LLC employees frequently communicated with U.S. regulators,
19 and actively worked to ensure that vehicles equipped with defeat devices were approved by
20 regulators.

21 158. [REDACTED]
22 [REDACTED]
23 [REDACTED]
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25 [REDACTED]
26 [REDACTED]
27 49 [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]⁵¹ [REDACTED]

[REDACTED]

159. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵²

160. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

161. In short, there can be no argument that only the carmakers communicated with Volkswagen's and Audi's regulators, or that the suppliers did not understand the regulatory implications of the defeat device software they developed.

⁵¹ [REDACTED]

⁵² [REDACTED]

1 **D. Defendants' False Advertising**

2 162. Volkswagen and Audi advertised their concern for the environment even while
3 selling vehicles equipped with Defeat Devices that polluted at levels far greater than legal limits.
4 For example, on the "Environment" page of its website, Volkswagen Group of America, Inc.,
5 stated as late as September 2015 that it takes "environmental responsibility very seriously. When
6 it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused
7 on reducing fuel consumption and emissions, building the world's cleanest diesel engines and
8 developing totally new power systems, which utilize new fuel alternatives." That "integrated
9 strategy" for reducing emissions seems to have consisted only of cheating emissions testing so
10 that Volkswagen and Audi vehicles only appeared to offer reduced emissions, while continuing to
11 pollute.

12 163. Long after Defendants became aware that many of their vehicles were deliberately
13 designed to cheat emissions tests, and even after EPA and CARB issued Notices of Violation for
14 diesel vehicles, Defendants continued to mislead consumers. While sales of new diesel vehicles
15 including those equipped with the defeat device described herein ceased in late 2015, news
16 reports indicate that Audi did not stop producing gasoline vehicles equipped with the defeat
17 device software complained of herein until May 2016, a full eight months after the 2015 scandal
18 broke and one month before the first settlement of the NOx defeat device litigation was
19 announced.

20 164. Volkswagen and Audi bolstered their apparent environmental bona fides by
21 trumpeting the fact that the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of
22 the Year and the 2009 Green Car of the Year, respectively. Shortly after the truth about
23 Volkswagen's diesel Defeat Devices came out in late September 2015, Green Car Journal
24 rescinded those awards.

25 165. Audi-branded 3.0-liter TDI equipped models were the subject of the second EPA
26 notice of violation in November 2015. These vehicles were advertised as "sipping fuel" while
27 offering cleaner emissions than gasoline models and offering excellent performance, using
28 phrases like "beauty with benevolence," "intelligent performance," and "a cleaner future"

(highlighting added). The below advertisements were live on Audi's www.audiusa.com website as of November 2, 2015:



2015 TDI® model lineup

With everything TDI® clean diesel has to offer, it's no wonder it's the intelligent choice. It starts with incredible performance, efficiency and a range second to none. It also turns out it could make the world a cleaner place—by cutting emissions by 12%.

[View TDI® model gallery](#)

Clean diesel technology explained

Understand how clean diesel technology impacts fuel efficiency and performance, while being a more eco-conscious choice.

[Explore clearly better diesel](#)

Models of note



A6 TDI®
Starting at \$59,500



Q5 TDI®
Starting at \$48,100

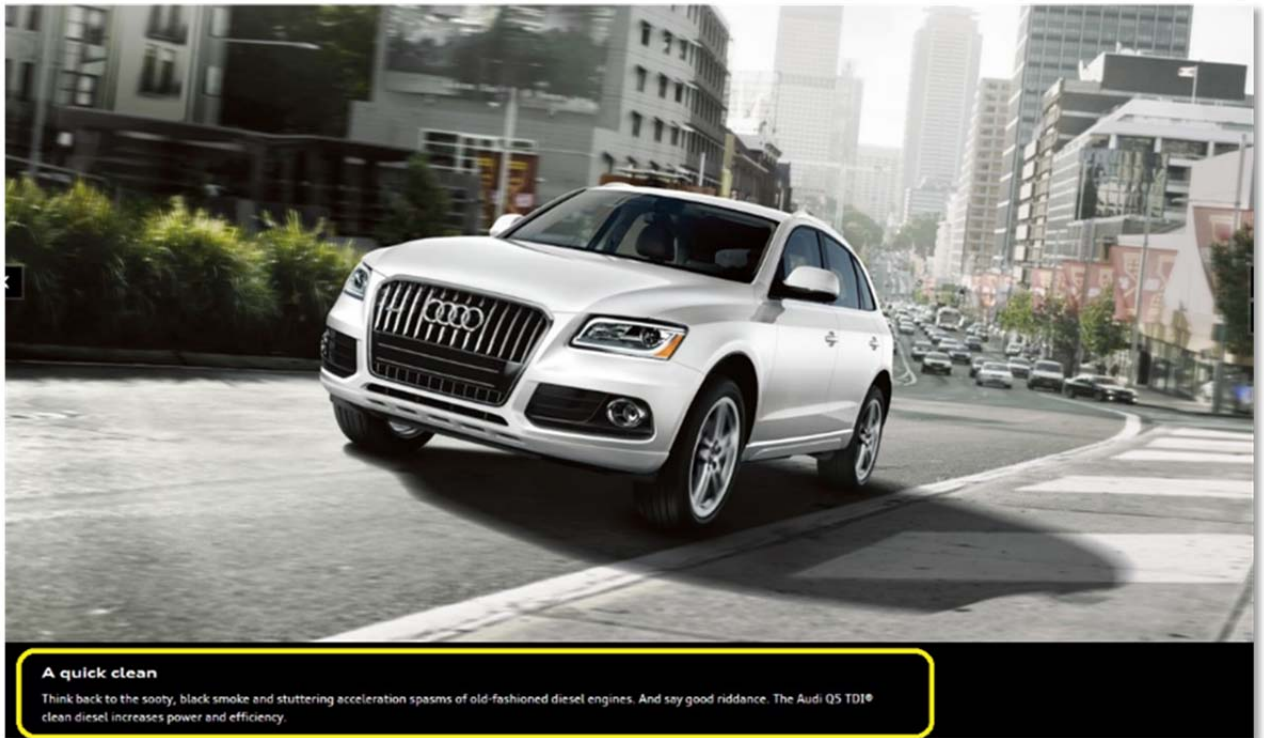


A8 L TDI®
Starting at \$85,200



Sip instead of guzzle

The Audi A6 TDI clean diesel engine sips fuel while emitting less CO₂ when compared with its gasoline counterparts.



The future can look brighter



A cleaner future Is beginning now.

With the TDI® clean diesel, Audi is pioneering the way for the vehicles and fuels of tomorrow. 12% lower CO₂ emissions than gasoline, TDI® is kind to the planet and has superior fuel efficiency combined with more torque and quick acceleration. An unbeatable combination.*



Intelligent performance

Efficiency shouldn't feel this powerful.

Audi TDI® clean diesel technology is packed with low-end torque, giving you incredible acceleration and passing power. So even though you feel the power kick in at higher speeds, the ingenious TDI® engine helps reduce fuel consumption.



166. Each of the models featured in the first three advertisements is now known to utilize the transmission “warm-up” mode Defeat Device that is the subject of this Complaint. The fourth advertisement makes reference to reduced levels of carbon dioxide pollution, but the truth

1 is that these vehicles emit lower levels of carbon dioxide only on a dynamometer, not during
2 normal operating conditions.

3 167. Carbon dioxide is a significant greenhouse gas, and the excessive emission of
4 carbon dioxide is a major cause of global warming and ocean acidification. For this reason, the
5 EPA and CARB regulate emissions of carbon dioxide from vehicles sold in the United States and
6 California.

7 168. Audi television advertisements featuring one of these vehicles, the A8, uses the
8 tagline “Truth in Engineering,” and can be seen at:
9 <http://www.youtube.com/watch?v=Afwgq0wqx2g>.

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15 **This is Truth in Engineering.**
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20 169. Defendants also launched a “Think Blue” program, which they explained is part of
21 their policy of being “more responsible on the road and more environmentally conscious—not
22 just in our cars.” Volkswagen advertised their Think Blue Collection as “eco-conscious” on its
23 Facebook webpage in or about April 2014, using the image below:
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**“You look
good in blue.”**
—Earth



View our eco-conscious **Think Blue.** Collection.



DriverGear

13 170. Unfortunately for consumers who bought the Class Vehicles and for everyone
14 affected by global warming, Defendants’ engineering was far from “truthful,” and their professed
15 commitment to environmental consciousness was illusory. Defendants have designed and sold
16 cars that emit pollutants at breath-taking levels, and they disguised it by engineering them to
17 detect and then cheat on state and federal environmental testing.

18 171. On January 11, 2017, the Department of Justice announced that Volkswagen AG,
19 Audi AG, and Volkswagen Group of America “agreed to plead guilty to participating in a [10-
20 year-long] conspiracy to defraud the United States and VW’s U.S. customers and to violate the
21 Clean Air Act by lying and misleading the EPA and U.S. customers about whether certain VW,
22 Audi and Porsche branded diesel vehicles complied with U.S. emissions standards.”⁵³

23 172. Under the terms of the agreement, which is attached hereto as Exhibit A, each
24 company: plead guilty to criminal felony counts of conspiracy, obstruction of justice, and
25 importing vehicles by using false statements; entered into organization probation for a period of
26

27 ⁵³ *Volkswagen AG Agrees to Plead Guilty and Pay \$4.3 Billion in Criminal and Civil Penalties*,
28 Department of Justice Office of Public Affairs (Jan. 11, 2017),
<https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six>.

three years; agreed to pay a \$2.8 billion criminal penalty; and agreed to “cooperate in an ongoing probe that could lead to the arrest of more employees.”⁵⁴

173. Audi AG, specifically, agreed to the verity of a number of facts regarding its role in the conspiracy, including the following, which have been excerpted from the agreement:

- “VW borrowed the original concept of the dual-mode, emissions cycle beating software from Audi.”⁵⁵
- “Audi engineers designed and installed software designed to detect, evade and defeat U.S. emissions standards, which constituted a defeat device under U.S. law.”⁵⁶
- “Audi AG engineers calibrated a defeat device . . . that varied injection levels of a solution consisting of urea and water (“AdBlue”) into the exhaust gas system based on whether the vehicle was being tested or not, with less NOx reduction occurring during regular driving conditions.”⁵⁷
- “Audi AG Employees made a presentation to CARB, during which Audi AG employees did not disclose that the Audi 2.0 and 3.0 Liter Subject Vehicles and the Porsche Vehicles in fact contained a defeat device, which caused emission discrepancies in those vehicles.”⁵⁸
- “Audi AG employees informed CARB that the 3.0 Liter Subject Vehicles did not possess the same emissions issues as the 2.0 Liter Subject Vehicles when, in fact, the 3.0 Liter Subject Vehicles possessed at least one defeat device that interfered with the emissions systems to reduce NOx emission on the dyno but not on the road.”⁵⁹
- In anticipation of a litigation hold, “Audi AG employees also destroyed documents related to U.S. Emissions issues. The VW and Audi AG employees who participated in this deletion activity did so to protect both VW and themselves from the legal consequences of their actions.”⁶⁰

174. On January 11, 2017, the Department of Justice also announced that federal grand jury “returned an indictment today charging six VW executives and employees:” Heinz-Jakob Neusser, who oversaw development of Volkswagen’s brand; Jens Hadler, who oversaw engine development; Richard Dorenkamp, another supervisor of engine development; Bernd Gottweis,

⁵⁴ Michael Biesecker, Tom Krisher and Dee-Ann Durbin, VW pleads guilty in emissions scandal; six employees indicted (Jan. 11, 2007), <https://phys.org/news/2017-01-vw-guilty-emissions-scandal-employees.html>.

⁵⁵ *United States of America v. Volkswagen AG*, No. 16-cr-20394 (E.D. Mich.), “Rule 11 Plea Agreement,” Ex 2-13, available: <https://www.justice.gov/opa/press-release/file/924436/download>.

⁵⁶ *Id.* at Ex 2-15.

⁵⁷ *Id.*

⁵⁸ *Id.* at 2-25.

⁵⁹ *Id.*

⁶⁰ *Id.* at Ex 2-27.

1 who helped oversee quality management; and Jürgen Peter who was a liaison between regulatory
2 agencies and the carmaker “for their roles in the nearly 10-year conspiracy.”⁶¹

3 175. According to an Associated Press report, “In announcing the federal
4 indictments...the Justice Department detailed an elaborate and wide-ranging scheme to commit
5 fraud and then cover it up [involving] [a]t least 40 VW employees [who] were involved in
6 destroying evidence.”⁶²

7 **E. Defendants Intentionally Hid the Excessive Pollution Emitted By the Class Vehicles.**

8 176. Defendants’ Defeat Devices are part of a computerized engine control system that
9 monitors sensors throughout the cars’ engine, transmission, and exhaust systems and controls
10 operation of the cars’ systems to ensure optimal performance. The functions controlled by those
11 systems include transmission shift points, fuel injection, valve and ignition timing, and operation
12 of the engines’ forced air induction systems such as turbochargers. The engine control computer
13 can, for example, ensure that the air-to-fuel mixture is correct based on sensor readings such as
14 throttle position, air flow, and engine temperature.

15 177. Because modern cars include these sophisticated computers and sensors
16 throughout the car’s systems, emissions testing sometimes uses a car’s existing sensors to
17 measure the presence of pollutants and track compliance with EPA and state emissions standards.
18 Emissions testing stations plug a diagnostic device into the car’s on-board diagnostics (“OBD II”)
19 port and use the car’s own exhaust sensors during the testing procedure to measure the substances
20 emitted. Some states, instead of or in addition to an OBD II diagnostic device, use a probe
21 inserted into the car’s exhaust pipe to measure the chemicals emitted.

22 178. In either case, during testing the cars are driven for a standardized duration and
23 engine speed on a dynamometer, to simulate driving on the road without actually moving. The
24 one respect in which driving on a dynamometer differs significantly from normal operation is that
25

26 ⁶¹ Michael Biesecker, Tom Krisher and Dee-Ann Durbin, *VW pleads guilty in emissions scandal;
27 six employees indicted*, Phys.org (Jan. 11, 2007), <https://phys.org/news/2017-01-vw-guilty-emissions-scandal-employees.html>.

28 ⁶² Associated Press, *VW pleads guilty in emissions scandal; six employees indicted*, FoxNews
Auto (Jan. 11, 2007), <http://www.foxnews.com/auto/2017/01/11/vw-admits-emissions-cheating-and-cover-up-will-pay-us-4-3b.html>.

1 the steering wheel need not (and, realistically, cannot) be turned more than a few degrees from
2 straight.

3 179. Here, Defendants programmed the engine control computers in the Class Vehicles
4 with software that effectively detects when the vehicle is undergoing emissions testing by turning
5 off a low-emitting gear-shifting program only once the steering wheel is turned more than fifteen
6 degrees. This ensures that the engine never revs above a certain, unrealistically low engine speed
7 during emissions testing, resulting in less fuel burnt and less carbon dioxide emitted than under
8 normal driving conditions. When the car is not being emissions tested—that is, under the vast
9 majority of normal operating conditions—the engine control systems operate the engine and
10 transmission in a manner that does not comply with EPA or CARB emissions requirements.

11 180. In short, this software allows Defendants' Class Vehicles to meet emissions
12 standards in labs or state testing stations while permitting the vehicles to emit carbon dioxide at
13 levels above the standard allowed under United States laws and regulations during normal
14 operation. Volkswagen has already admitted that the Defeat Devices relating to oxides of nitrogen
15 installed in its diesel vehicles violated state and federal laws, including CARB standards and the
16 Clean Air Act, but has remained silent about its additional scheme to cheat on emissions tests
17 relating to fleetwide fuel economy and CO₂ emissions standards.

18 181. Nor was the diesel scandal the first time that Volkswagen allegedly engineered
19 vehicles to cheat emission standards. As reported by the *Los Angeles Times* on September 23,
20 2015, Volkswagen paid a \$120,000 fine to EPA in 1974 in order to settle charges that “it gamed
21 pollution control systems in four models by changing carburetor settings and shutting off an
22 emissions-control system at low temperatures.”

23 182. Moreover, it appears Defendants were warned as long ago as 2007 by suppliers
24 and their own employees not to cheat on emissions tests. According to September 27, 2015 report
25 by the *Associated Press* concerning the diesel Defeat Device, “VW’s internal investigation has
26 found a 2007 letter from parts supplier Bosch warning Volkswagen not to use the software during
27 regular operation.” Also, “a Volkswagen technician raised concerns about illegal practices in
28 connection with emissions levels in 2011.”

1 183. Despite those warnings, Defendants manufactured, marketed, and sold cars with
2 Defeat Devices designed to allow higher levels of pollutant emissions than those allowed by state
3 and federal law, thus defrauding their customers, and engaging in unfair competition under state
4 and federal laws.

5 184. Defendants' illegal and deceptive actions have caused Class members significant
6 harm. Even if Defendants were to repair the Class Vehicles so that they comply with emissions
7 requirements, the repair would not compensate Plaintiffs and the Class for the significant harm
8 Defendants' deception has caused. This is true for at least two reasons.

9 185. First, any repairs performed as part of the recall are likely to significantly diminish
10 the performance of the Class Vehicles. The Defeat Device works by causing the transmission to
11 shift gears at unusually low engine speed, emitting legal levels of carbon dioxide and using less
12 fuel, at the expense of performance. If Defendants were to "repair" the Class Vehicles by
13 reprogramming the car's software to engage this shift program—which currently operates only
14 when the car first starts up or is undergoing emissions testing—at all times in a manner that
15 reduces available engine power and performance to bring carbon dioxide emissions within legal
16 limits. Plaintiffs' and Class members' cars will therefore not perform as advertised if "repaired"
17 in this manner.

18 186. Second, even if a more functional repair is possible, it could not compensate for
19 the financial damages Plaintiffs and Class members have suffered, including the high prices
20 Plaintiffs and the Class paid to own high-performing, luxurious Audi-branded vehicles that
21 complied with emissions requirements and comported with Audi's advertised commitment to the
22 environment and the inevitable reduction in resale value caused by any recall to repair the
23 vehicles and any resulting diminished performance. Adding insult to injury, many of the Class
24 Vehicles have already seen their values diminished by Defendants' diesel Defeat Device scandal.

25 187. Third, Plaintiffs and Class members are already experiencing reputational harm as
26 unwilling vectors for Defendants' pollution-producing vehicles.

27 188. For those reasons, as a result of Defendants' unfair, deceptive, and/or fraudulent
28 business practices, and its failure to disclose that the Class Vehicles utilize a Defeat Device to

1 cheat emissions tests, owners and/or lessees of the Class Vehicles have suffered losses in money
2 and/or property.

3 189. Had Plaintiffs and Class members known of the “Defeat Device” at the time they
4 purchased or leased their Class Vehicles, they would not have purchased or leased those vehicles,
5 or would have paid substantially less for the vehicles than they did.

6 190. Plaintiffs have suffered damages as a result their purchases of the Class Vehicles,
7 including but not limited to (i) overpayment for a vehicle that is incapable of performing as
8 represented, (ii) future additional fuel costs, (iii) loss of performance from future repairs, and (iv)
9 diminution of vehicle value.

10 191. In the autumn of 2015, after the diesel Defeat Device scandal came to light,
11 Volkswagen’s then-CEO, Martin Winterkorn, said in a statement that he was “deeply sorry that
12 we have broken the trust of our customers and the public,” and that Defendants would be
13 suspending sales of some 2015 and 2016 vehicles with diesel engines. But despite the appearance
14 of candor, Defendants continued to sell gasoline vehicles equipped with Defeat Devices long after
15 Winterkorn’s statement.

16 192. In sum, Defendants’ deliberate strategy to value profit over the truth, human
17 health, and the environment, has caused serious harm to consumers nationwide.

18 **VII. CLASS ACTION ALLEGATIONS**

19 193. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil
20 Procedure 23(a); (b)(1); (b)(2); (b)(3); and/or (c)(4), on behalf of themselves and all others
21 similarly situated as members of the following Nationwide Class and State Classes (collectively,
22 the “Classes”); on their federal and state claims as the purchasers and lessees of the following
23 Class Vehicles with 3.0-liter or larger gasoline engines:

Audi A6	2012-2016
Audi A7	2012-2016
Audi A8 and 8L	2012-2016
Audi Q5	2013-2016

194. The proposed Classes are defined as:

Nationwide Class

All persons and entities in the United States, including its territories, who purchased or leased a Class Vehicle.

Alabama State Class

All persons and entities in the state of Alabama who purchased or leased a Class Vehicle.

Alaska State Class

All persons and entities in the state of Alaska who purchased or leased a Class Vehicle.

Arizona State Class

All persons and entities in the state of Arizona who purchased or leased a Class Vehicle.

Arkansas State Class

All persons and entities in the state of Arkansas who purchased or leased a Class Vehicle.

California State Class

All persons and entities in the state of California who purchased or leased a Class Vehicle.

Colorado State Class

All persons and entities in the state of Colorado who purchased or leased a Class Vehicle.

Connecticut State Class

All persons and entities in the state of Connecticut who purchased or leased a Class Vehicle.

Delaware State Class

All persons and entities in the state of Delaware who purchased or leased a Class Vehicle.

District of Columbia Class

All persons and entities in the District of Columbia who purchased or leased a Class Vehicle.

Florida State Class

All persons and entities in the state of Florida who purchased or leased a Class Vehicle.

Georgia State Class

All persons and entities in the state of Georgia who purchased or leased a Class Vehicle.

Hawaii State Class

All persons and entities in the state of Hawaii who purchased or leased a Class Vehicle.

Idaho State Class

All persons and entities in the state of Idaho who purchased or leased a Class Vehicle.

Illinois State Class

All persons and entities in the state of Illinois who purchased or leased a Class Vehicle.

Indiana State Class

All persons and entities in the state of Indiana who purchased or leased a Class Vehicle.

Iowa State Class

All persons and entities in the state of Iowa who purchased or leased a Class Vehicle.

Kansas State Class

All persons and entities in the state of Kansas who purchased or leased a Class Vehicle.

Kentucky State Class

All persons and entities in the state of Kentucky who purchased or leased a Class Vehicle.

Louisiana State Class

All persons and entities in the state of Louisiana who purchased or leased a Class Vehicle.

Maine State Class

All persons and entities in the state of Maine who purchased or leased a Class Vehicle.

Maryland State Class

All persons and entities in the state of Maryland who purchased or leased a Class Vehicle.

Massachusetts State Class

All persons and entities in the state of Massachusetts who purchased or leased a Class Vehicle.

Michigan State Class

All persons and entities in the state of Michigan who purchased or leased a Class Vehicle.

Minnesota State Class

All persons and entities in the state of Minnesota who purchased or leased a Class Vehicle.

Mississippi State Class

All persons and entities in the state of Mississippi who purchased or leased a Class Vehicle.

Missouri State Class

All persons and entities in the state of Missouri who purchased or leased a Class Vehicle.

Montana State Class

All persons and entities in the state of Montana who purchased or leased a Class Vehicle.

Nebraska State Class

All persons and entities in the state of Nebraska who purchased or leased a Class Vehicle.

Nevada State Class

All persons and entities in the state of Nevada who purchased or leased a Class Vehicle.

New Hampshire State Class

All persons and entities in the state of New Hampshire who purchased or leased a Class Vehicle.

New Jersey State Class

All persons and entities in the state of New Jersey who purchased or leased a Class Vehicle.

New Mexico State Class

All persons and entities in the state of New Mexico who purchased or leased a Class Vehicle.

New York State Class

All persons and entities in the state of New York who purchased or leased a Class Vehicle.

North Carolina State Class

All persons and entities in the state of North Carolina who purchased or leased a Class Vehicle.

North Dakota State Class

All persons and entities in the state of North Dakota who purchased or leased a Class Vehicle.

Ohio State Class

All persons and entities in the state of Ohio who purchased or leased a Class Vehicle.

Oklahoma State Class

All persons and entities in the state of Oklahoma who purchased or leased a Class Vehicle.

Oregon State Class

All persons and entities in the state of Oregon who purchased or leased a Class Vehicle.

Pennsylvania State Class

All persons and entities in the state of Pennsylvania who purchased or leased a Class Vehicle.

Rhode Island State Class

All persons and entities in the state of Rhode Island who purchased or leased a Class Vehicle.

South Carolina State Class

All persons and entities in the state of South Carolina who purchased or leased a Class Vehicle.

South Dakota State Class

All persons and entities in the state of South Dakota who purchased or leased a Class Vehicle.

Tennessee State Class

All persons and entities in the state of Tennessee who purchased or leased a Class Vehicle.

Texas State Class

All persons and entities in the state of Texas who purchased or leased a Class Vehicle.

Utah State Class

All persons and entities in the state of Utah who purchased or leased a Class Vehicle.

Vermont State Class

All persons and entities in the state of Vermont who purchased or leased a Class Vehicle.

Virginia State Class

All persons and entities in the state of Virginia who purchased or leased a Class Vehicle.

Washington State Class

All persons and entities in the state of Washington who purchased or leased a Class Vehicle.

West Virginia State Class

All persons and entities in the state of West Virginia who purchased or leased a Class Vehicle.

Wisconsin State Class

All persons and entities in the state of Wisconsin who purchased or leased a Class Vehicle.

Wyoming State Class

All persons and entities in the state of Wyoming who purchased or leased a Class Vehicle.

195. Excluded from the Classes are: (A) Defendants, including any entity or division in which Defendants have a controlling interest, as well as their agents, representatives, officers, directors, employees, trustees, parents, children, heirs, assigns, and successors, and other persons or entities related to, or affiliated with Defendants; (B) the Judges to whom this case is assigned, their staff, and their immediate families; and (C) governmental entities.

196. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses under Rule 23(c)(5), or modified in any other way.

197. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used in individual actions alleging the same claims.

198. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23 and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of its provisions.

1. Numerosity: Federal Rule of Civil Procedure 23(a)(1)

199. The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. Plaintiffs are informed and believe that there are not less than hundreds of thousands of members of the Class, and at least hundreds of members in each State Class. The precise number and identities of Nationwide Class and State Class members may be ascertained from Defendants' records and motor vehicle regulatory data. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

2. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)

200. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. Whether Defendants engaged in the conduct alleged herein;
- b. Whether Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;
- c. Whether the transmission control system in the Class Vehicles contains a defect in that it does not comply with EPA requirements;

1 d. Whether the transmission control systems in Class Vehicles can be made to
 2 comply with EPA standards without substantially degrading the performance of the Class
 3 Vehicles;

4 e. Whether Defendants knew about the defeat device and, if so, how long
 5 Defendants have known;

6 f. Whether Defendants designed, manufactured, marketed, and distributed
 7 Class Vehicles with a “defeat device;”

8 g. Whether Defendants’ conduct violates consumer protection statutes,
 9 warranty laws, and other laws as asserted herein;

10 h. Whether Plaintiffs and the other Class members overpaid for their Class
 11 Vehicles;

12 i. Whether Plaintiffs and the other Class members are entitled to equitable
 13 relief, including, but not limited to, restitution or injunctive relief;

14 j. Whether Plaintiffs and the other Class members are entitled to damages
 15 and other monetary relief and, if so, in what amount; and

16 k. Whether Defendants continue to unlawfully conceal and misrepresent
 17 whether additional vehicles, besides those reported in the press to date, are in fact Class Vehicles.

18 **3. Typicality: Federal Rule of Civil Procedure 23(a)(3)**

19 201. Plaintiffs’ claims are typical of the claims of the Class members whom they seek
 20 to represent under Fed. R. Civ. P. 23(a)(3), because Plaintiffs and each Class member purchased a
 21 Class Vehicle and were comparably injured through Defendants’ wrongful conduct as described
 22 above. Neither Plaintiffs nor the other Class members would have purchased the Class Vehicles
 23 had they known of the defects in the vehicles. Plaintiffs and the other Class members suffered
 24 damages as a direct proximate result of the same wrongful practices by Defendants. Plaintiffs’
 25 claims arise from the same practices and courses of conduct that give rise to the claims of the
 26 other Class members. Plaintiffs’ claims are based upon the same legal theories as the claims of
 27 the other Class members.
 28

1 **4. Adequacy: Federal Rule of Civil Procedure 23(a)(4)**

2 202. Plaintiffs will fairly and adequately represent and protect the interests of the Class
3 members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs' interests do not conflict with the
4 interests of the Class members. Plaintiffs have retained counsel competent and experienced in
5 complex class action litigation, including vehicle defect litigation and other consumer protection
6 litigation. Plaintiffs intend to prosecute this action vigorously. Neither Plaintiffs nor their counsel
7 have interests that conflict with the interests of the other Class members. Therefore, the interests
8 of the Class members will be fairly and adequately protected.

9 **5. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)**

10 203. Defendants have acted or refused to act on grounds generally applicable to
11 Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief
12 and declaratory relief, as described below, with respect to the Class as a whole.

13 **6. Superiority: Federal Rule of Civil Procedure 23(b)(3)**

14 204. A class action is superior to any other available means for the fair and efficient
15 adjudication of this controversy, and no unusual difficulties are likely to be encountered in the
16 management of this class action. The damages or other financial detriment suffered by Plaintiffs
17 and the other Class members are relatively small compared to the burden and expense that would
18 be required to individually litigate their claims against Defendants, so it would be impracticable
19 for members of the Class to individually seek redress for Defendants' wrongful conduct.

20 205. Even if Class members could afford individual litigation, the court system could
21 not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and
22 increases the delay and expense to all parties and the court system. By contrast, the class action
23 device presents far fewer management difficulties and provides the benefits of single
24 adjudication, economy of scale, and comprehensive supervision by a single court.

1 **VIII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

2 **A. Discovery Rule Tolling**

3 206. The tolling doctrine was made for cases of concealment like this one. For the
4 following reasons, any otherwise-applicable statutes of limitation have been tolled by the
5 discovery rule with respect to all claims.

6 207. Through the exercise of reasonable diligence, and within any applicable statutes of
7 limitation, Plaintiffs and members of the proposed Class could not have discovered that
8 Defendants were concealing and misrepresenting the true emissions levels of its vehicles,
9 including but not limited to their use of defeat devices.

10 208. Plaintiffs and the other Class members could not have reasonably discovered, and
11 did not know of facts that would have caused a reasonable person to suspect, that Defendants
12 intentionally failed to report information within their knowledge to federal and state authorities,
13 dealerships, or consumers until – at the earliest – November 7, 2016, when published reports
14 surfaced for the first time disclosing the existence of the herein described defeat device.

15 209. Likewise, a reasonable and diligent investigation could not have disclosed that
16 Defendants had information in their possession about the existence of its sophisticated emissions
17 deception and that they concealed that information, which was only discovered by Plaintiffs
18 immediately before this action was filed.

19 **B. Tolling Due To Fraudulent Concealment**

20 210. Throughout the relevant time period, all applicable statutes of limitation have been
21 tolled by Defendants' knowing and active fraudulent concealment and denial of the facts alleged
22 in this Complaint.

23 211. Upon information and belief, prior to the date of this Complaint, and at least as
24 early as February 2013, if not earlier, Defendants knew of the defeat device in the Class Vehicles,
25 but continued to distribute, sell, and/or lease the Class Vehicles to Plaintiffs and the class
26 members. In doing so, Defendants concealed and expressly denied the existence of problem with
27 CO₂ emissions, and/or failed to notify Plaintiffs and the Class members about the true nature of
28 the Class Vehicles.

212. Instead of disclosing their deception, or that the emissions from the Class Vehicles were far worse than represented, Defendants falsely represented that its vehicles complied with federal and state emissions standards, and that they were reputable manufacturers whose representations could be trusted.

213. Any otherwise-applicable statutes of limitation have therefore been tolled by Defendants' exclusive knowledge active concealment of the facts alleged herein.

C. Estoppel

214. Defendants were and are under a continuous duty to disclose to Plaintiffs and Class members the true character, quality, and nature of the Class Vehicles, including their emissions systems and their compliance with applicable federal and state law.

215. Although Defendants had the duty throughout the relevant period to disclose to Plaintiffs and Class members that they had engaged in the deception described in this Complaint, Defendants chose to evade federal and state emissions and clean air standards with respect to the Class Vehicles, actively concealed the true character, quality, and nature of the Class Vehicles, and knowingly made misrepresentations about the quality, reliability, characteristics, and/or performance of the Class Vehicles.

216. Defendants actively concealed the true character, quality, performance, and nature of the defeat device in the Class Vehicles, and Plaintiffs and the class members reasonably relied upon Defendants' knowing and active concealment of these facts.

217. Based on the foregoing, Defendants are estopped from relying on any statutes of limitations in defense of this action.

IX. CAUSES OF ACTION

A. Claims Asserted on Behalf of the Nationwide Class

NATIONWIDE COUNT I: VIOLATION OF 18 U.S.C. § 1962(C)-(D) The Racketeer Influenced And Corrupt Organizations Act ("RICO")

218. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

219. Plaintiffs bring this Count on behalf of the Nationwide Class against Defendants VW AG, VW America, Audi AG, Audi America (collectively for this count, the “Volkswagen RICO Defendants”), and Bosch GmbH and Bosch LLC (collectively for this count, the “Bosch RICO Defendants”) (together with the Volkswagen RICO Defendants, the “RICO Defendants”).

220. Volkswagen conducts its business—legitimate and illegitimate—through various affiliates and subsidiaries, each of which is a separate legal entity. Audi conducts its business—legitimate and illegitimate—through various affiliates and subsidiaries, each of which is a separate legal entity. Bosch also conducts its business, both legitimate and illegitimate, through various subsidiaries and affiliates.⁶³

221. At all relevant times, the RICO Defendants have been “persons” under 18 U.S.C. § 1961(3) because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

222. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c).

223. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

224. For many years, the RICO Defendants aggressively sought to increase their sales of the Class Vehicles (and components contained therein) in an effort to bolster their revenues, augment profits, and increase their market share in the United States. Finding it impossible to achieve their ambitious goals lawfully, however, the RICO Defendants resorted to cheating through their fraudulent scheme and conspiracy. The illegal scheme was hatched overseas by VW AG and Audi AG (collectively, the “German Volkswagen Defendants”), brought to U.S. shores by and through the vehicles of VW America and Audi America (collectively, the

⁶³http://www.bosch.com/en/com/bosch_group/business_sectors_divisions/business_sectors_divisions_2.php (last visited on Feb. 20, 2016).

1 “American Volkswagen Defendants”), and executed in conjunction with Bosch and unnamed co-
 2 conspirators.

3 225. In particular, the RICO Defendants, along with IAV, ZF, Continental, and other
 4 entities and individuals, were employed by or associated with, and conducted or participated in
 5 the affairs of, one or several RICO enterprises (described below and referred to collectively as the
 6 “Defeat Device RICO Enterprise”), whose purpose was to deceive regulators and the driving
 7 public into believing that the Class Vehicles were compliant with emission standards, consumed
 8 less fuel, and emitted less CO₂ and other pollutants so as to increase revenues and minimize
 9 losses from the design, manufacture, distribution and sale of the Class Vehicles and the CO₂
 10 defeat devices installed therein. As a direct and proximate result of their fraudulent scheme and
 11 common course of conduct, the RICO Defendants were able to extract millions dollars from
 12 Plaintiffs and the Class. As explained in detail below, the RICO Defendants’ years-long
 13 misconduct violated Sections 1962(c) and (d).

14 **B. Description of the Defeat Device RICO Enterprise**

15 226. In an effort to expand its market share in the U.S. and beyond, VW AG, a
 16 publicly-traded German company, formed VW America, a separate New Jersey company, which
 17 is headquartered in Virginia. VW America is not publicly traded and thus has no SEC reporting
 18 obligations, but it does have reporting obligations, protections and responsibilities unique to the
 19 State of New Jersey. VW AG also controls Audi AG which, in turn, formed a separate U.S.
 20 subsidiary that is not publicly traded—Audi America—to market and sell the Class Vehicles
 21 throughout the U.S. At all relevant times, VW AG and Audi AG maintained tight control over
 22 the design, manufacture, and testing of the Class Vehicles.

23 227. At all relevant times, the RICO Defendants, along with other individuals and
 24 entities, including unknown third parties involved in the design, manufacture, testing, and sale of
 25 the Class Vehicles, operated an association-in-fact enterprise, which was formed for the purpose
 26 of fraudulently obtaining COCs from the EPA (and EOs from CARB) in order to import and sell
 27 the Class Vehicles containing the CO₂ defeat device throughout the U.S., and through which they
 28 conducted a pattern of racketeering activity under 18 U.S.C. § 1961(4).

1 228. Alternatively, each of the American Volkswagen Defendants constitutes a single
2 legal entity “enterprise” within the meaning of 18 U.S.C. § 1961(4), through which the RICO
3 Defendants conducted their pattern of racketeering activity in the U.S. Specifically, VW America
4 is the entity through which Volkswagen applied for, and obtained, the EPA COCs for the VW-
5 and Audi-branded Class Vehicles with material misrepresentations and omissions about their
6 specifications in order to introduce them into the U.S. stream of commerce. And, on information
7 and belief, the German Volkswagen Defendants used each of the American Volkswagen
8 Defendants to distribute and sell the illegal Class Vehicles throughout the United States. Bosch
9 participated, either directly or indirectly, in the conduct of the enterprise’s affairs by developing,
10 supplying, and concealing the defeat devices. IAV participated, either directly or indirectly, in
11 the conduct of the enterprise’s affairs by developing, testing, and concealing the defeat devices.
12 Continental participated, either directly or indirectly, in the conduct of the enterprise’s affairs by
13 developing and supplying the ECUs used in some of the Class Vehicles, which comprised part of
14 the mechanism by which the defeat devices were actuated. Finally, ZF participated, either
15 directly or indirectly, in the conduct of the enterprise’s affairs by supplying the transmissions
16 used in the Class Vehicles, developing the transmission and TCMs in which the defeat devices
17 are embedded, and programming them to reduce vehicle emissions during emissions testing. The
18 American Volkswagen Defendants’ separate legal statuses facilitated the fraudulent scheme and
19 provided a hoped-for shield from liability for the RICO Defendants and their co-conspirators.

20 229. At all relevant times, the Defeat Device RICO Enterprise constituted a single
21 “enterprise” or multiple enterprises within the meaning of 18 U.S.C. § 1961(4), as legal entities,
22 as well as legal entities associated-in-fact for the common purpose of engaging in RICO
23 Defendants’ profit-making scheme.

24 230. The association-in-fact Defeat Device RICO Enterprise consisted of the entities
25 described below.
26
27
28

1 **1. The Volkswagen RICO Defendants**

2 231. Each Volkswagen RICO Defendant is a distinct legal entity, but they are all
3 controlled (directly or indirectly) by Defendant VW AG.⁶⁴ Specifically, Audi AG is a majority-
4 owned subsidiary of VW AG. Audi America is also a subsidiary of VW AG.

5 232. As noted previously, the Volkswagen RICO Defendants made it their mission to
6 become the dominant automotive manufacturing conglomerate in the world. At the time they
7 articulated this goal, however, Volkswagen was struggling to retain its foothold in the U.S.
8 market. The strategy of wooing customers with premium products was not paying off, and VW
9 America's costly plant in Chattanooga, Tennessee was "woefully underutilized."⁶⁵

10 233. In response to these obstacles, VW AG and its leader at the time, Martin
11 Winterkorn, set in motion an ambitious plan to triple Volkswagen's sales in the United States.
12 While the linchpin of this strategy was increasing sales of "diesel-powered cars . . . [and]
13 promising high mileage and low emissions without sacrificing performance,"⁶⁶ the strategy also
14 included expanding its market share in the U.S. through the sale of gasoline vehicles. Audi AG's
15 CEO, Rupert Stadler, was tasked with implementing Winterkorn's lofty growth goals through the
16 sale of Audi vehicles, including the Class Vehicles at issue here.

17 234. As with diesel vehicle emission standards, the emission standards pertaining to
18 gasoline vehicles in the U.S. were ratcheting up. Specifically, increasingly stringent standards for
19 both CO₂ emissions and average fuel economy were implemented by the EPA and NHTSA
20 beginning in 2011.

21 235. The Volkswagen RICO Defendants knew that to sell the Class Vehicles in the
22 U.S., the vehicles had to meet these new standards. As it turned out, however, the Volkswagen
23 RICO Defendants were either unable or unwilling to devise a solution within the constraints of
24 the law.

25 ⁶⁴ http://www.volkswagenag.com/content/vwcorp/content/en/brands_and_products.html;
26 http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2015/03/Y_2014_e.bn.html/binarystorageitem/file/GB+2014_e.pdf

27 ⁶⁵ Anton Watts. *VW Drama: Why Piech Wants Winterkorn Out-and What the Future May Hold*.
Car and Driver (Apr. 16, 2015).

28 ⁶⁶ Danny Kim, Aaron Danny Hakim, Aaron Kessler, and Jack Ewing, "As Volkswagen Pushed to
Be No. 1, Ambitions Fueled a Scandal," *New York Times* (Sept. 26, 2015).

1 236. Accordingly, the Volkswagen RICO Defendants worked with the other members
2 of the Defeat Device RICO Enterprise, including Bosch, IAV, Continental, and ZF, to devise a
3 scheme to illegally circumvent the U.S.'s stringent emissions standards by incorporating the CO₂
4 defeat device into the Class Vehicles' ECUs and/or TCMs. Employing this technology, the
5 Volkswagen RICO Defendants fraudulently obtained COCs (and EOs) for the Class Vehicles
6 even though they emit unlawful levels of toxic pollutants into the atmosphere during normal
7 operating conditions.

8 237. Moreover, in order to profit from the scheme and increase their sales according to
9 plan, the Volkswagen RICO Defendants falsely marketed the Class Vehicles as not only
10 compliant with EPA and CARB standards, but also as being environmentally friendly without
11 compromising performance.

12 238. In sum, as part of their effort to become the dominant automotive manufacturing
13 conglomerate in the world, the Volkswagen RICO Defendants controlled and directed the
14 enterprise with the common purpose of deceiving regulators and the public through lies and
15 deception to increase their market shares and profits, and minimize losses.

16 **2. The Bosch RICO Defendants**

17 239. As explained above, Bosch supplied the ECUs that were used to actuate the CO₂
18 defeat devices in some of the Class Vehicles.

19 240. Defendant Bosch GmbH is a multinational engineering and electronics company
20 headquartered in Gerlingen, Germany, which has hundreds of subsidiaries and companies. It
21 wholly owns defendant Bosch LLC, a Delaware limited liability company headquartered in
22 Farmington Hills, Michigan. As explained above, Bosch's sectors and divisions are grouped by
23 subject matter, not location. The Mobility Solutions (formerly Automotive Technology) is the
24 Bosch sector at issue here and it encompasses employees of Bosch GmbH and Bosch LLC.
25 These individuals were responsible for the design, manufacture, development, customization, and
26 supply of the CO₂ defeat device to Volkswagen and Audi for use in the Class Vehicles.

27 241. As it did in connection with Volkswagen and Audi's diesel vehicles, Bosch
28 worked with Volkswagen and Audi to develop and implement a specific and unique set of

1 software algorithms to enable their gasoline vehicles to surreptitiously evade emissions
 2 regulations. Bosch similarly customized its ECUs for installation in the Class Vehicles with
 3 unique software code to detect when it was undergoing emissions testing, as described above.

4 242. Bosch was well aware that the ECUs would be used by Volkswagen and Audi to
 5 cheat on emissions testing. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]⁶⁷ [REDACTED]

9 [REDACTED]⁶⁸ [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]⁶⁹ [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 243. Bosch was also critical to the concealment of the defeat device in communications
 17 with U.S. regulators.

18 **3. Unnamed Co-Conspirator IAV**

19 244. As explained above, IAV was involved in developing and testing the Class
 20 Vehicles.

21 245. IAV GmbH is a privately held engineering company headquartered in Berlin,
 22 Germany, which has various subsidiaries. It wholly owns IAV-AE, a Michigan corporation
 23 headquartered in Northville, Michigan. VW AG holds a 50% ownership share in IAV GmbH.
 24 Defendants Volkswagen, Audi, and Bosch are clients of both IAV GmbH and IAV-AE.

25 246. IAV was also critical to the concealment of the defeat device in communications
 26 with U.S. regulators.

27 ⁶⁷ [REDACTED]

28 ⁶⁸ [REDACTED]

⁶⁹ [REDACTED]

1 **4. Unnamed Co-Conspirator ZF**

2 247. As explained above, ZF was involved in supplying the transmissions used in the
3 Class Vehicles, as well as developing and programming the TCMs that concealed the defeat
4 devices and worked in conjunction with the ECUs to reduce emissions when it was detected that
5 the Vehicles were undergoing emissions testing.

6 248. ZF AG is a privately held engineering company headquartered in Friedrichshafen,
7 Germany, which has various subsidiaries. It wholly owns ZF America, a Michigan corporation
8 headquartered in Northville, Michigan. ZF AG formerly held a 50% ownership share in a joint
9 venture predecessor to Robert Bosch Automotive Steering GmbH, an independent division within
10 the Bosch Group.

11 249. ZF was also critical to the concealment of the defeat device in the Class Vehicles
12 and provided one of the means by which CO₂ emissions were reduced during emissions testing.

13 **5. Unnamed Co-Conspirator Continental**

14 250. As explained above, Continental was involved in supplying the ECUs used to
15 actuate the defeat device in some of the Class Vehicles.

16 251. Continental AG (“Continental”) is a manufacturing company specializing in
17 automotive parts headquartered in Hanover, Germany. Continental manufactures numerous
18 automotive parts including tires, powertrain and chassis components, electronics, and brake
19 systems. Through its VDO brand, acquired from Siemens AG in 2007, Continental also develops
20 and supplies engine management systems and other automotive electronics. Certain Class
21 Vehicles use Continental or VDO engine management systems.

22 252. Continental Automotive Systems US, Inc., (“CAS”) is one of the American
23 corporate subsidiaries of Continental AG. CAS operates the American arm of Continental’s
24 automotive electronics and powertrain business under both the Continental and VDO brands, and
25 is headquartered in Auburn Hills, Michigan.

26 253. Continental was also critical to the concealment of the defeat device in the Class
27 Vehicles and provided one of the means by which CO₂ emissions were reduced during emissions
28 testing.

1 **C. The Defeat Device RICO Enterprise Sought to Increase Defendants’ Profits**
 2 **and Revenues**

3 254. The Defeat Device RICO Enterprise began by 2013 at the latest, when a final
 4 report on Audi’s vehicle testing from the “SummerFahrt,” or Summer Drive, in South Africa
 5 essentially identified the CO₂ defeat device as a solution to the increasingly stringent emission
 6 and fuel economy standards by reducing vehicle emissions of CO₂ through a change in engine
 7 electronics. The CO₂ defeat device was a byproduct of the series of agreements entered into
 8 between Volkswagen and Bosch starting in mid-2005 to develop what ultimately became the
 9 NO_x defeat device. IAV employees were given access to the ECUs containing the CO₂ defeat
 10 device pursuant to these agreements between Volkswagen and Bosch. Continental, through its
 11 VDO division, developed and supplied the ECUs for some of the Class Vehicles, while Bosch
 12 developed and supplied the ECUs for others. ZF developed the transmissions and programmed
 13 the TCMs—with, on information and belief, input from Bosch—which worked in tandem with
 14 the ECUs to execute the actual cheat function. The Defeat Device RICO Enterprise continued
 15 without interruption for years, as Defendants successfully installed Bosch and Continental ECUs
 16 in approximately 100,000 of the Class Vehicles sold in the United States. It was not until late
 17 2015 or early 2016 that the Defeat Device RICO Enterprise began to unravel, when German
 18 authorities detected irregularities and increased CO₂ emissions in Audi vehicles. Thereafter, in
 19 the summer of 2016, CARB reportedly discovered the CO₂ defeat device in the Class Vehicles,
 20 thereby uncovering Defendants’ scheme.

21 255. At all relevant times, the Defeat Device RICO Enterprise: (a) had an existence
 22 separate and distinct from each RICO Defendant; (b) was separate and distinct from the pattern of
 23 racketeering in which the RICO Defendants engaged; and (c) was an ongoing and continuing
 24 organization consisting of legal entities, including the Volkswagen RICO Defendants, their
 25 network of dealerships, the Bosch RICO Defendants, IAV, Continental, ZF, and other entities and
 26 individuals associated for the common purpose of designing, manufacturing, distributing, testing,
 27 and selling the Class Vehicles to Plaintiffs and the Nationwide Class through fraudulent COCs
 28 and EOs, false emissions tests, deceptive and misleading sales tactics and materials, and deriving

1 profits and revenues from those activities. Each member of the Defeat Device RICO Enterprise
2 shared in the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from
3 increased sales revenue generated by the scheme to defraud Class members nationwide.⁷⁰

4 256. The Defeat Device RICO Enterprise functioned by selling vehicles and component
5 parts to the consuming public. Many of these products are legitimate, including vehicles that do
6 not contain defeat devices. However, the RICO Defendants and their co-conspirators, through
7 their illegal Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent
8 scheme to increase revenue for Defendants and the other entities and individuals associated-in-
9 fact with the Enterprise's activities through the illegal scheme to sell the Class Vehicles.

10 257. The Defeat Device RICO Enterprise engaged in, and its activities affected
11 interstate and foreign commerce, because it involved commercial activities across state
12 boundaries, such as the marketing, promotion, advertisement and sale or lease of the Class
13 Vehicles throughout the country, and the receipt of monies from the sale of the same.

14 258. Within the Defeat Device RICO Enterprise, there was a common communication
15 network by which co-conspirators shared information on a regular basis. The Defeat Device
16 RICO Enterprise used this common communication network for the purpose of manufacturing,
17 marketing, testing, and selling the Class Vehicles to the general public nationwide.

18 259. Each participant in the Defeat Device RICO Enterprise had a systematic linkage to
19 each other through corporate ties, contractual relationships, financial ties, and continuing
20 coordination of activities. Through the Defeat Device RICO Enterprise, the RICO Defendants
21 functioned as a continuing unit with the purpose of furthering the illegal scheme and their
22 common purposes of increasing their revenues and market share, and minimizing losses.

23 260. The RICO Defendants participated in the operation and management of the Defeat
24 Device RICO Enterprise by directing its affairs, as described herein. While the RICO Defendants
25 participated in, and are members of, the enterprise, they have a separate existence from the
26

27 ⁷⁰ The Volkswagen Defendants sold more Class Vehicles while charging consumers a premium
28 for purportedly emission compliant, environmentally friendly, and fuel efficient Class Vehicles.
Bosch, in turn, sold more ECUs because the Volkswagen Defendants manufactured and sold
more Class Vehicles.

1 enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers,
2 directors, employees, individual personhood, reporting requirements, and financial statements.

3 261. The Volkswagen RICO Defendants exerted substantial control over the Defeat
4 Device RICO Enterprise, and participated in the affairs of the Defeat Device RICO Enterprise by:

- 5 a. designing the Class Vehicles with defeat devices;
- 6 b. failing to correct or disable the defeat devices when warned;
- 7 c. manufacturing, distributing, and selling the Class Vehicles that emitted greater
8 pollution than allowable under the applicable regulations;
- 9 d. misrepresenting and omitting (or causing such misrepresentations and
10 omissions to be made) vehicle specifications on COC and EO applications;
- 11 e. introducing the Class Vehicles into the stream of U.S. commerce without a
12 valid EPA COC and/or CARB EO;
- 13 f. concealing the existence of the defeat devices and the unlawfully high
14 emissions from regulators and the public;
- 15 g. persisting in the manufacturing, distribution, and sale of the Class Vehicles
16 even after questions were raised about the emissions testing and discrepancies
17 concerning the same;
- 18 h. misleading government regulators as to the nature of the defeat devices and the
19 defects in the Class Vehicles;
- 20 i. misleading the driving public as to the nature of the defeat devices and the
21 defects in the Class Vehicles;
- 22 j. designing and distributing marketing materials that misrepresented and
23 concealed the defect in the vehicles;
- 24 k. otherwise misrepresenting or concealing the defective nature of the Class
25 Vehicles from the public and regulators;
- 26 l. illegally selling and/or distributing the Class Vehicles;
- 27 m. collecting revenues and profits from the sale of such products; and
- 28

1 n. ensuring that the other RICO Defendants and unnamed co-conspirators
2 complied with the fraudulent scheme.

3 262. The Bosch RICO Defendants participated in, operated and/or directed the Defeat
4 Device RICO Enterprise. Bosch participated in the fraudulent scheme by manufacturing,
5 installing, testing, modifying, and supplying ECUs which operated as the CO₂ defeat device in the
6 Class Vehicles. Bosch exercised tight control over the coding and other aspects of the defeat
7 device software and was closely collaborated with Volkswagen to develop, customize, and
8 calibrate the CO₂ defeat devices. Additionally, Bosch continuously cooperated with the
9 Volkswagen RICO Defendants to ensure that the ECUs were fully integrated into the Class
10 Vehicles. Bosch also participated in the affairs of the Enterprise by concealing the CO₂ defeat
11 devices on U.S. documentation and in communications with U.S. regulators. Bosch collected
12 millions of dollars in revenues and profits from the hidden defeat devices installed in the Class
13 Vehicles.

14 263. IAV participated in the Defeat Device RICO Enterprise by developing, testing and
15 concealing the CO₂ defeat device in the Class Vehicles. Upon information and belief, Continental
16 participated in the Defeat Device RICO Enterprise by manufacturing, installing, testing,
17 modifying, and supplying ECUs which operated as the CO₂ defeat device in the Class Vehicles.
18 ZF also participated in the Defeat Device RICO Enterprise by developing and programming the
19 TCMs that concealed the CO₂ defeat device and reduced CO₂ emissions so that the Class
20 Vehicles could fraudulently pass emissions testing. Without the RICO Defendants' and co-
21 conspirators' willing participation, including Bosch's active involvement in developing and
22 supplying the critical defeat devices for the Class Vehicles, IAV's active involvement in testing
23 the Class Vehicles and concealing the results of such testing, Continental's active involvement in
24 developing and supplying the ECUs used to actuate the defeat device in some of the Class
25 Vehicles, and ZF's active involvement in developing the TCMs that concealed the CO₂ devices
26 and programming the TCMs to reduce CO₂ emissions during emissions testing, the Defeat Device
27 RICO Enterprise's scheme and common course of conduct would not have been successful.
28

1 264. The RICO Defendants directed and controlled the ongoing organization necessary
 2 to implement the scheme at meetings and through communications of which Plaintiffs cannot
 3 fully know at present, because such information lies in the Defendants' and others' hands.

4 **D. Mail and Wire Fraud**

5 265. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants,
 6 each of whom is a person associated-in-fact with the Defeat Device RICO Enterprise, did
 7 knowingly conduct or participate, directly or indirectly, in the conduct of the affairs of the Defeat
 8 Device RICO Enterprise through a pattern of racketeering activity within the meaning of 18
 9 U.S.C. §§ 1961(1), 1961(5), and 1962(c), and which employed the use of the mail and wire
 10 facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

11 266. Specifically, the RICO Defendants have committed, conspired to commit, and/or
 12 aided and abetted in the commission of, at least two predicate acts of racketeering activity (*i.e.*,
 13 violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years. The multiple acts of
 14 racketeering activity which the RICO Defendants committed, or aided or abetted in the
 15 commission of, were related to each other, posed a threat of continued racketeering activity, and
 16 therefore constitute a "pattern of racketeering activity." The racketeering activity was made
 17 possible by the RICO Defendants' regular use of the facilities, services, distribution channels, and
 18 employees of the Defeat Device RICO Enterprise. The RICO Defendants participated in the
 19 scheme to defraud by using mail, telephone and the Internet to transmit mailings and wires in
 20 interstate or foreign commerce.

21 267. The RICO Defendants used, directed the use of, and/or caused to be used,
 22 thousands of interstate mail and wire communications in service of their scheme through virtually
 23 uniform misrepresentations, concealments and material omissions.

24 268. In devising and executing the illegal scheme, the RICO Defendants devised and
 25 knowingly carried out a material scheme and/or artifice to defraud Plaintiffs and the Nationwide
 26 Class or to obtain money from Plaintiffs and the Nationwide Class by means of materially false or
 27 fraudulent pretenses, representations, promises, or omissions of material facts. For the purpose of
 28 executing the illegal scheme, the RICO Defendants committed these racketeering acts, which

1 number in the thousands, intentionally and knowingly with the specific intent to advance the
 2 illegal scheme.

3 269. The RICO Defendants' predicate acts of racketeering (18 U.S.C. § 1961(1))
 4 include, but are not limited to:

5 a. Mail Fraud: The RICO Defendants violated 18 U.S.C. § 1341 by sending
 6 or receiving, or by causing to be sent and/or received, materials via U.S. mail or commercial
 7 interstate carriers for the purpose of executing the unlawful scheme to design, manufacture,
 8 market, and sell the Class Vehicles by means of false pretenses, misrepresentations, promises, and
 9 omissions.

10 b. Wire Fraud: The RICO Defendants violated 18 U.S.C. § 1343 by
 11 transmitting and/or receiving, or by causing to be transmitted and/or received, materials by wire
 12 for the purpose of executing the unlawful scheme to defraud and obtain money on false pretenses,
 13 misrepresentations, promises, and omissions.

14 270. The RICO Defendants' use of the mails and wires include, but are not limited to,
 15 the transmission, delivery, or shipment of the following by the RICO Defendants or third parties
 16 that were foreseeably caused to be sent as a result of Defendants' illegal scheme:

- 17 a. the Class Vehicles themselves;
- 18 b. component parts for the defeat devices;
- 19 c. essential hardware for the Class Vehicles;
- 20 d. falsified emission tests;
- 21 e. fraudulent applications for EPA COCs and CARB EOs;
- 22 f. fraudulently-obtained EPA COCs and CARB EOs;
- 23 g. vehicle registrations and plates as a result of the fraudulently-obtained EPA
- 24 COCs and CARB EOs;
- 25 h. documents and communications that facilitated the falsified emission tests;
- 26 i. false or misleading communications intended to lull the public and regulators
- 27 from discovering the defeat devices and/or other auxiliary devices;
- 28

- j. sales and marketing materials, including advertising, websites, product packaging, brochures, and labeling, which misrepresented and concealed the true nature of the Class Vehicles;
- k. documents intended to facilitate the manufacture and sale of the Class Vehicles, including bills of lading, invoices, shipping records, reports and correspondence;
- l. documents to process and receive payment for the Class Vehicles by unsuspecting Class members, including invoices and receipts;
- m. payments to Bosch, IAV, Continental, and ZF;
- n. deposits of proceeds; and
- o. other documents and things, including electronic communications.

271. The RICO Defendants (or their agents), for the purpose of executing the illegal scheme, sent and/or received (or caused to be sent and/or received) by mail or by private or interstate carrier, shipments of the Class Vehicles and related documents by mail or a private carrier affecting interstate commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
VW AG and/or VW America	Palisades Audi, New York	Upon information and belief, fourth quarter of 2013	Shipment of 2014 Audi A8 Class Vehicles.
VW America	Audi Dealerships	Upon information and belief, third quarter of 2014	Marketing materials for 2015 Class Vehicles.
New Mexico Motor Vehicle Division	Geert Wenes	April 2013	Mailed Certificate of Vehicle Registration for 2013 Audi Q5 based on false emission test due to concealed defeat device.
Maryland Department of Transportation, Motor Vehicle Administration	Michael Gray	March 2016	Mailed Registration Certificate for 2016 Audi Q5 based on false emission test due to concealed defeat device.
EPA, Michigan	Volkswagen America,	February 2011	COC for 2012 Class Vehicles

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
	Michigan		based on fraudulent application.
EPA, Michigan	Volkswagen America, Michigan	March 2012 and November 2012	COCs for 2013 Class Vehicles based on fraudulent applications.
CARB, California	Volkswagen America, Michigan	June 2013	EO for 2014 Class Vehicles based on fraudulent application.
CARB, California	Volkswagen America, Michigan	May 2014 and June 2014	EOs for 2015 Class Vehicles based on fraudulent applications.
CARB, California	Volkswagen America, Michigan	January 2015 and July 2015	EOs for 2016 Class Vehicles based on fraudulent applications.

272. The Volkswagen RICO Defendants (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
VW America, Michigan	EPA, Michigan and CARB, California	January 25, 2011	Certification Summary Information Report with emission test results for 2012 Class Vehicles.
VW America, Michigan	EPA, Michigan and CARB, California	July 19, 2012 and September 28, 2012 and	Certification Summary Information Reports with emission test results for 2013 Class Vehicles.
VW America, Michigan	EPA, Michigan and CARB, California	May 7, 2013	Certification Summary Information Report with emission test results for 2014 Class Vehicles.
VW America, Michigan	EPA, Michigan and CARB, California	June 5, 2014	Certification Summary Information Reports with emission test results for 2015 Class Vehicles.
VW America, Michigan	EPA, Michigan and CARB, California	December 17, 2014 and June 20, 2015	Certification Summary Information Reports with emission test results for 2016 Class Vehicles.
Audi AG	Audi America	June 6, 2013	Email correspondence regarding concealment of low power shift mode from the public and regulators.

1 273. The RICO Defendants also used the internet and other electronic facilities to carry
2 out the scheme and conceal the ongoing fraudulent activities. Specifically, the American
3 Volkswagen Defendants, under the direction and control of the German Volkswagen Defendants,
4 made misrepresentations about the Class Vehicles on their websites and through ads online, all of
5 which were intended to mislead regulators and the public about the fuel efficiency, emissions
6 standards, and other performance metrics.

7 274. The RICO Defendants also communicated by U.S. mail, by interstate facsimile,
8 and by interstate electronic mail with various other affiliates, regional offices, divisions,
9 dealerships and other third-party entities in furtherance of the scheme.

10 275. The mail and wire transmissions described herein were made in furtherance of the
11 RICO Defendants' scheme and common course of conduct to deceive regulators and consumers
12 and lure consumers into purchasing the Class Vehicles, which the RICO Defendants knew or
13 recklessly disregarded as emitting illegal amounts of pollution, despite their advertising campaign
14 that the Class Vehicles were environmentally friendly without compromising performance.

15 276. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate
16 wire facilities have been deliberately hidden, and cannot be alleged without access to the RICO
17 Defendants' books and records. However, Plaintiffs have described the types of, and in some
18 instances, occasions on which the predicate acts of mail and/or wire fraud occurred. They include
19 thousands of communications to perpetuate and maintain the scheme, including the things and
20 documents described in the preceding paragraphs.

21 277. The RICO Defendants have not undertaken the practices described herein in
22 isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d),
23 the RICO Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Various
24 other persons, firms and corporations, including third-party entities and individuals not named as
25 defendants in this Complaint, have participated as co-conspirators with the RICO Defendants in
26 these offenses and have performed acts in furtherance of the conspiracy to increase or maintain
27 revenues, increase market share, and/or minimize losses for the RICO Defendants and their
28 unnamed co-conspirators throughout the illegal scheme and common course of conduct.

1 278. The RICO Defendants aided and abetted others in the violations of the above laws,
2 thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341 and 1343 offenses.

3 279. To achieve their common goals, the RICO Defendants hid from the general public
4 the unlawfulness and emission dangers of the Class Vehicles and obfuscated the true nature of the
5 defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored
6 warnings from third parties, whistleblowers, and governmental entities about the discrepancies in
7 emissions testing and the defeat devices present in the Class Vehicles.

8 280. The RICO Defendants and each member of the conspiracy, with knowledge and
9 intent, have agreed to the overall objectives of the conspiracy and participated in the common
10 course of conduct to commit acts of fraud and indecency in designing, manufacturing,
11 distributing, marketing, testing, and/or selling the Class Vehicles (and the CO₂ defeat devices
12 contained therein).

13 281. Indeed, for the conspiracy to succeed each of the RICO Defendants and their co-
14 conspirators had to agree to implement and use the similar devices and fraudulent tactics—
15 specifically complete secrecy about the defeat devices in the Class Vehicles.

16 282. The RICO Defendants knew and intended that government regulators, as well as
17 Plaintiffs and Class members, would rely on the material misrepresentations and omissions made
18 by them and the American Volkswagen Defendants about the Class Vehicles. The RICO
19 Defendants knew and intended that consumers would incur costs as a result. As fully alleged
20 herein, Plaintiffs, along with tens of thousands of other consumers, relied upon the RICO
21 Defendants' representations and omissions that were made or caused by them. Plaintiffs' reliance
22 is made obvious by the fact that they purchased and leased illegal vehicles that never should have
23 been introduced into the U.S. stream of commerce and whose worth has now plummeted since the
24 scheme was revealed. In addition, the EPA, CARB, and other regulators relied on the
25 misrepresentations and material omissions made or caused to be made by the RICO Defendants;
26 otherwise Volkswagen and Audi could not have obtained valid COCs and EOs to sell the Class
27 Vehicles.
28

1 283. As described herein, the RICO Defendants engaged in a pattern of related and
 2 continuous predicate acts for years. The predicate acts constituted a variety of unlawful activities,
 3 each conducted with the common purpose of obtaining significant monies and revenues from
 4 Plaintiffs and Class members based on their misrepresentations and omissions, while providing
 5 Class Vehicles that were worth significantly less than the purchase price paid. The predicate acts
 6 also had the same or similar results, participants, victims, and methods of commission. The
 7 predicate acts were related and not isolated events.

8 284. The predicate acts all had the purpose of generating significant revenue and profits
 9 for the RICO Defendants at the expense of Plaintiffs and Class members. The predicate acts were
 10 committed or caused to be committed by the RICO Defendants through their participation in the
 11 Defeat Device RICO Enterprise and in furtherance of its fraudulent scheme, and were interrelated
 12 in that they involved obtaining Plaintiffs' and Class members' funds and avoiding the expenses
 13 associated with remediating the Class Vehicles.

14 285. During the design, manufacture, testing, marketing and sale of the Class Vehicles,
 15 the RICO Defendants shared technical, marketing, and financial information that revealed the
 16 existence of the defeat devices contained therein. Nevertheless, the Volkswagen RICO
 17 Defendants shared and disseminated information that deliberately misrepresented the Class
 18 Vehicles as legal, environmentally friendly, and fuel efficient.

19 286. By reason of, and as a result of the conduct of the RICO Defendants, and in
 20 particular, their pattern of racketeering activity, Plaintiffs and Class members have been injured in
 21 their business and/or property in multiple ways, including but not limited to:

- 22 a. Purchase or lease of an illegal, defective Class Vehicle;
- 23 b. Overpayment for a Class Vehicle, in that Plaintiffs and Class members
 24 believed they were paying for a vehicle that met certain emission and fuel
 25 efficiency standards and obtained a vehicle that was anything but;
- 26 c. The value of the Class Vehicles has diminished, thus reducing their resale
 27 value;
- 28 d. Other out-of-pocket and loss-of-use expenses;

e. Payment for alternative transportation; and

f. Loss of employment due to lack of transportation.

287. The RICO Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to Plaintiffs and Class members, and Plaintiffs and Class members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

**NATIONWIDE COUNT II:
FRAUD BY CONCEALMENT
(Common Law)**

288. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

289. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class or, in the alternative, on behalf of the State Subclasses, against all Defendants.

290. Each Defendant committed fraud by installing and calibrating defeat device software in the Defeat Devices Vehicles, which were unlawfully concealed from regulators and consumers alike. In uniform advertising and materials provided with each Class Vehicle, the Volkswagen and Audi Defendants concealed from Plaintiffs and the Class that the defeat device software circumvented federal and state vehicle emissions standards by lowering emissions of pollutants during emissions certification testing.

291. The Volkswagen and Audi Defendants intentionally concealed, suppressed, and failed to disclose the facts that the Class Vehicles contained illegal defeat device software and emitted unlawfully high levels of pollutants such as CO₂. These Defendants, along with the Bosch Defendants, knew or should have known the true facts, due to their involvement in the design, installment, and calibration of the defeat device software in the Class Vehicles. And yet, at no time did any of these Defendants reveal the truth to Plaintiffs or the Class. To the contrary, each Defendant concealed the truth, intending for Plaintiffs and the Class to rely—which they did by purchasing and leasing the Class Vehicles.

292. A reasonable consumer would not have expected that the Class Vehicles contained illegal defeat device software designed to cheat emissions certification testing or that the Class

1 Vehicles would emit unlawfully high levels of pollutants such as CO₂ during normal driving
2 operation. Plaintiffs and the members of the Class did not know of the facts which were
3 concealed from them by Defendants. Moreover, as consumers, Plaintiffs and the members of the
4 Class did not, and could not, unravel the deception on their own.

5 293. Defendants had a duty to disclose the defeat device software and that the Class
6 Vehicles emitted unlawfully high levels of pollutants such as CO₂ during normal driving
7 operation. Defendants had such a duty because the true facts were known and/or accessible only
8 to them and because they knew these facts were not known to or reasonably discoverable by
9 Plaintiffs or the members of the Class.

10 294. The Volkswagen Defendants also had a duty to disclose the true nature of the
11 Class Vehicles in light of their statements about the qualities and characteristics of the Class
12 Vehicles with respect to emissions standards, fuel efficiency and performance, which were
13 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth
14 above regarding the existence of the defeat device software and actual levels of vehicle emissions.

15 295. Having volunteered to provide information to Plaintiffs and the members of the
16 Class, the Volkswagen Defendants had the duty to disclose the whole truth. On information and
17 belief, the Volkswagen Defendants have still not made full and adequate disclosures and continue
18 to defraud Plaintiffs and the members of the Class by concealing material information regarding
19 the emissions qualities of the Class Vehicles.

20 296. Had the truth been revealed, Plaintiffs and the Class would not have purchased the
21 Class Vehicles, or would have paid less for them. Plaintiffs and the members of the Class have
22 sustained damage because they own or lease Class Vehicles that should never have been placed in
23 the stream of commerce and are diminished in value as a result of Defendants' fraud.
24 Accordingly, Defendants are liable to Plaintiffs and the members of the Class for damages in an
25 amount to be proven at trial.

26 297. Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with
27 intent to defraud; in reckless disregard of the rights of Plaintiffs and the Class; and to enrich
28 themselves. Their misconduct warrants an assessment of punitive damages in an amount

1 sufficient to deter such conduct in the future, which amount shall be determined according to
2 proof at trial.

3 **COUNT III:**
4 **IMPLIED AND WRITTEN WARRANTY**
5 **Magnuson - Moss Warranty Act (15 U.S.C. §§ 2301, *et seq.*)**

6 298. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 299. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class
9 against the Volkswagen and Audi defendants (collectively for this count, “Defendants”).

10 300. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by
11 virtue of 28 U.S.C. § 1332 (a)-(d).

12 301. Plaintiffs and Class members are “consumers” within the meaning of the
13 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

14 302. Defendants are “supplier[s]” and “warrantor[s]” within the meaning of the
15 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

16 303. The Class Vehicles are “consumer products” within the meaning of the Magnuson-
17 Moss Warranty Act, 15 U.S.C. § 2301(1).

18 304. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is
19 damaged by the failure of a warrantor to comply with a written or implied warranty.

20 305. Defendants’ provided Plaintiffs and the Nationwide Class with the following two
21 express warranties, which are covered under 15 U.S.C. § 2301(6):

22 a. **Manufacturer’s Warranty**—This written warranty provides “bumper-to-
23 bumper” limited express warranty coverage for a minimum of 4 years or 50,000 miles, whichever
24 comes first. The warranty covers emissions related repairs.

25 b. **Federal Emissions Warranty**—Consistent with federal law, the
26 Volkswagen Defendants provided a “performance warranty” and a “design and defect warranty.”
27 In the event that a vehicle fails an emissions test, these warranties cover the repair and
28 replacement of: all emission control and emission-related parts for two years or 24,000 miles
(whichever comes first); and specified major emission control components, including catalytic

1 converters, electronic emissions control unit or computer and on-board emissions diagnostic
2 device or computer for 8 years or 80,000 miles (whichever comes first).

3 306. The Class Vehicles' implied warranties are covered under 15 U.S.C. § 2301(7).

4 307. The terms of these warranties became part of the basis of the bargain when
5 Plaintiffs and each member of the Class purchased or leased their Class Vehicles.

6 308. Defendants breached these written and implied warranties as described in detail
7 above. Without limitation, the Class Vehicles share a common design defect in that they emit
8 more pollutants than: (a) is allowable under the applicable regulations, and (b) was revealed to
9 regulators, consumers, and the driving public.

10 309. Plaintiffs and each member of the Class have had sufficient direct dealings with
11 either Defendants or their agents (including dealerships) to establish privity of contract between
12 Defendants, on the one hand, and Plaintiffs and each member of the Class, on the other hand.
13 Nonetheless, privity is not required here because Plaintiffs and each member of the Class are
14 intended third-party beneficiaries of contracts between Defendants and their dealers, and of their
15 implied warranties. The dealers were not intended to be the ultimate consumers of the Class
16 Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the
17 warranty agreements were designed for and intended to benefit consumers only.

18 310. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile. At the time of sale or lease of each Class Vehicle,
20 Defendants knew, or should have known, of their misrepresentations and/or material omissions
21 concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify
22 the situation and/or disclose the design defect. Under the circumstances, the remedies available
23 under any informal settlement procedure would be inadequate and any requirement that Plaintiffs
24 or members of the Class resort to an informal dispute resolution procedure and/or afford
25 Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby
26 deemed satisfied.

27 311. In addition, given the conduct described herein, any attempts by Defendants, in
28 their capacity as warrantors, to limit the implied warranties in a manner that would exclude

1 coverage of the defect is unconscionable and any such effort to disclaim, or otherwise limit,
2 liability for the defect is null and void.

3 312. Plaintiffs and the other Class members would suffer economic hardship if they
4 returned their Class Vehicles, but did not receive the return of all payments made by them to
5 Defendants. Because Defendants are refusing to acknowledge any revocation of acceptance and
6 have not immediately returned any payments made, Plaintiffs and the Class have not re-accepted
7 their Class Vehicles by retaining them.

8 313. The amount in controversy of Plaintiffs' individual claims meets or exceeds the
9 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
10 interest and costs, computed on the basis of all claims to be determined in this lawsuit.

11 314. As a direct and proximate result of the Defendants' breach of the written and
12 implied warranties, Plaintiffs and each member of the Class have suffered damages.

13 315. Plaintiffs, individually and on behalf of the Class, seek all damages permitted by
14 law, including compensation for the monetary difference between the Class Vehicles as warranted
15 and as sold or leased; compensation for the reduction in resale value; the cost of purchasing,
16 leasing, or renting replacement vehicles, along with all other incidental and consequential
17 damages, statutory attorney fees, and all other relief allowed by law.

18 **E. State-Specific Claims**

19 **ALABAMA COUNT I:**
20 **Violations of the Alabama Deceptive Trade Practices Act**
21 **Ala. Code § 8-19-1, *et seq.***
(On Behalf of the Alabama State Class)

22 316. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
23 set forth herein.

24 317. This count is brought on behalf of the Alabama State Class against all Defendants.

25 318. Plaintiffs and the Alabama State Class members are "consumers" within the
26 meaning of Ala. Code § 8-19-3(2).

27 319. Plaintiffs, the Alabama State Class members, and Defendants are "persons" within
28 the meaning of Ala. Code § 8-19-3(5).

1 320. The Class Vehicles are “goods” within the meaning of Ala. Code § 8-19-3(3).

2 321. Defendants were and is engaged in “trade or commerce” within the meaning of
3 Ala. Code § 8-19-3(8).

4 322. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several
5 specific actions to be unlawful, including: “(5) Representing that goods or services have
6 sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not
7 have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or
8 that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any
9 other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or
10 commerce.” Ala. Code § 8-19-5.

11 323. In the course of its business, Defendants concealed and suppressed material facts
12 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
13 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
14 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
15 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
16 testing by way of deliberately induced false readings.

17 324. Plaintiffs and Alabama State Class members had no way of discerning that
18 Defendants’ representations were false and misleading because Defendants’ defeat device
19 software was extremely sophisticated technology. Plaintiffs and Alabama State Class members
20 did not and could not unravel Defendants’ deception on their own.

21 325. Defendants thus violated the Alabama DTPA by, at minimum: representing that
22 Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;
23 representing that Class Vehicles are of a particular standard, quality, and grade when they are not;
24 advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing
25 that the subject of a transaction involving Class Vehicles has been supplied in accordance with a
26 previous representation when it has not.

27 326. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiffs and the Alabama State Class.

1 327. Defendants knew or should have known that their conduct violated the Alabama
2 DTPA.

3 328. Defendants owed Plaintiffs and the Alabama State Class a duty to disclose the
4 illegality, public health and safety risks, the true nature of the Class Vehicles, because
5 Defendants:

6 A. possessed exclusive knowledge that they were manufacturing, selling, and
7 distributing vehicles throughout the United States that did not comply with regulations;

8 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
9 Alabama State Class members; and/or

10 C. made incomplete representations about the Class Vehicles generally, and
11 the use of the defeat device in particular, while purposefully withholding material facts from
12 Plaintiffs that contradicted these representations.

13 329. Defendants' fraudulent use of the "defeat device" and its concealment of the true
14 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
15 Plaintiffs and the Alabama State Class.

16 330. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
18 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
19 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

20 331. Plaintiffs and the Alabama State Class suffered ascertainable loss and actual
21 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
22 of and failure to disclose material information. Plaintiffs and the Alabama State Class members
23 who purchased or leased the Class Vehicles would not have purchased or leased them at all
24 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
25 legal to sell—would have paid significantly less for them. Plaintiffs and the Alabama State Class
26 also suffered diminished value of their vehicles, as well as lost or diminished use.

27 332. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
28 LLC complying with Ala. Code § 8-19-10(e). Additionally, all Defendants were provided notice

1 of the issues raised in this count and this Complaint by the governmental investigations, the
 2 numerous complaints filed against them, and the many individual notice letters sent by Plaintiffs
 3 within a reasonable amount of time after the allegations of Class Vehicle defects became public.
 4 Moreover, Plaintiffs sent a second notice letter pursuant to Ala. Code § 8-19-10(e) to all
 5 Defendants on October 11, 2017. Because Defendants failed to remedy their unlawful conduct
 6 within the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the
 7 Alabama State Class are entitled.

8 **ALABAMA COUNT II:**
 9 **Breach of Express Warranty**
 10 **Ala. Code §§ 7-2-313 and 7-2A-210**
 11 **(On Behalf of the Alabama State Class)**

12 333. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 13 fully set forth herein.

14 334. This count is brought on behalf of the Alabama State Class against the
 15 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

16 335. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 17 vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and a “seller” of motor vehicles under
 18 § 7-2-103(1)(d).

19 336. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 20 of motor vehicles under Ala. Code. § 7-2A-103(1)(p).

21 337. The Class Vehicles are and were at all relevant times “goods” within the meaning
 22 of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

23 338. In connection with the purchase or lease of each one of its new vehicles,
 24 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 25 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 26 materials or workmanship.”

27 339. Defendants also made numerous representations, descriptions, and promises to
 28 Plaintiffs and Alabama State Class members regarding the performance and emission controls of
 their vehicles.

1 340. For example, as shown below, Defendants included in the warranty booklets for
 2 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
 3 so as to conform at the time of sale with all applicable regulations of the United States
 4 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

15 341. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
 16 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
 17 Warranty.”

18 342. The EPA requires vehicle manufacturers to provide a Performance Warranty with
 19 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
 20 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
 21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
 22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
 23 emission control components are covered for the first eight years or 80,000 miles (whichever
 24 comes first). These major emission control components subject to the longer warranty include the
 25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
 26 device or computer.

27 343. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
 28 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express

1 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
2 Design and Defect Warranty required by the EPA covers repair of emission control or emission
3 related parts, which fail to function or function improperly because of a defect in materials or
4 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
5 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
6 comes first.

7 344. As manufacturers of light-duty vehicles, Defendants were required to provide
8 these warranties to purchasers or lessees of Class Vehicles.

9 345. Defendants' warranties formed a basis of the bargain that was reached when
10 Alabama State Class members purchased or leased their Class Vehicles equipped with the non-
11 compliant emission systems.

12 346. Despite the existence of warranties, Defendants failed to inform Alabama State
13 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
14 compliance with applicable state and federal emissions laws, and failed to fix the defective
15 emission components free of charge.

16 347. Defendants breached the express warranty promising to repair and correct
17 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
18 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

19 348. Affording Defendants a reasonable opportunity to cure their breach of written
20 warranties would be unnecessary and futile here.

21 349. Furthermore, the limited warranty promising to repair and correct Defendants'
22 defect in materials and workmanship fails in its essential purpose because the contractual remedy
23 is insufficient to make Alabama State Class members whole and because Defendants have failed
24 and/or have refused to adequately provide the promised remedies within a reasonable time.

25 350. Accordingly, recovery by the Alabama State Class members is not restricted to the
26 limited warranty promising to repair and correct Defendants' defect in materials and
27 workmanship, and they seek all remedies as allowed by law.
28

351. Also, as alleged in more detail herein, at the time Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Alabama State Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

352. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship, as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Alabama State Class members' remedies would be insufficient to make them whole.

353. Finally, because of Defendants' breach of warranty as set forth herein, Alabama State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

354. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

355. As a direct and proximate result of Defendants' breach of express warranties, Alabama State Class members have been damaged in an amount to be determined at trial.

**ALABAMA COUNT III:
Breach of Implied Warranty of Merchantability
Ala. Code §§ 7-2-314 and 7-2A-212
(On Behalf of the Alabama State Class)**

356. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

357. This count is brought on behalf of the Alabama State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

358. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and a “seller” of motor vehicles under § 7-2-103(1)(d).

359. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Ala. Code. § 7-2A-103(1)(p).

360. The Class Vehicles are and were at all relevant times “goods” within the meaning of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

361. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ala. Code §§ 7-2-314 and 7-2A-212.

362. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

363. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

364. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Alabama State Class members have been damaged in an amount to be proven at trial.

**ALASKA COUNT I:
Violations of the Alaska Unfair Trade Practices and Consumer Protection Act
Alaska Stat. Ann. § 45.50.471 *et seq.*
(On Behalf of the Alaska State Class)**

365. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

366. This count is brought on behalf of the Alaska State Class against all Defendants.

1 367. The Alaska Unfair Trade Practices And Consumer Protection Act (“Alaska CPA”)
2 declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of
3 trade or commerce unlawful, including: “(4) representing that goods or services have sponsorship,
4 approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a
5 person has a sponsorship, approval, status, affiliation, or connection that the person does not
6 have;” “(6) representing that goods or services are of a particular standard, quality, or grade, or
7 that goods are of a particular style or model, if they are of another;” “(8) advertising goods or
8 services with intent not to sell them as advertised;” or “(12) using or employing deception, fraud,
9 false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or
10 omitting a material fact with intent that others rely upon the concealment, suppression or
11 omission in connection with the sale or advertisement of goods or services whether or not a
12 person has in fact been misled, deceived or damaged.” Alaska Stat. § 45.50.471.

13 368. In the course of its business, Defendants concealed and suppressed material facts
14 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
15 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
16 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
17 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
18 testing by way of deliberately induced false readings.

19 369. Alaska State Class members had no way of discerning that Defendants’
20 representations were false and misleading because Defendants’ defeat device software was
21 extremely sophisticated technology. Plaintiffs and Alaska State Class members did not and could
22 not unravel Defendants’ deception on their own.

23 370. Defendants thus violated the Alaska CPA by, at minimum: representing that Class
24 Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing
25 that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising
26 Class Vehicles with the intent not to sell or lease them as advertised; and representing that the
27 subject of a transaction involving Class Vehicles has been supplied in accordance with a previous
28 representation when it has not.

1 371. The Clean Air Act and EPA regulations require that automobiles limit their
 2 emissions output to specified levels. These laws are intended for the protection of public health
 3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
 4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
 5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
 6 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
 7 Alaska CPA.

8 372. Defendants intentionally and knowingly misrepresented material facts regarding
 9 the Class Vehicles with intent to mislead Plaintiffs and the Alaska State Class.

10 373. Defendants knew or should have known that their conduct violated the Alaska
 11 CPA.

12 374. Defendants owed Plaintiffs and the Alaska State Class a duty to disclose the
 13 illegality, public health and safety risks, the true nature of the Class Vehicles, because
 14 Defendants:

15 A. possessed exclusive knowledge that they were manufacturing, selling, and
 16 distributing vehicles throughout the United States that did not comply with regulations;

17 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
 18 Class members; and/or

19 C. made incomplete representations about the Class Vehicles generally, and
 20 the use of the defeat device in particular, while purposefully withholding material facts from
 21 Plaintiffs that contradicted these representations.

22 375. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
 23 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
 24 Plaintiffs and the Alaska State Class.

25 376. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
 26 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
 27 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
 28 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

377. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

378. As a direct and proximate result of Defendants' violations of the Alaska CPA, Plaintiffs and the Alaska State Class have suffered injury-in-fact and/or actual damage.

379. Pursuant to Alaska Stat. § 45.50. 531, Plaintiffs and the Alaska State Class seek monetary relief against Defendants measured as the greater of (a) three times the actual damages in an amount to be determined at trial or (b) \$500 for each Plaintiffs and each Alaska State Class member.

380. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices pursuant to Alaska Stat. § 45.50. 535, attorneys' fees, and any other just and proper relief available under the Alaska CPA.

381. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America, LLC complying with Alaska Stat. § 45.50.535. Additionally, all Defendants were provided notice of the issues raised in this count and this Complaint by the governmental investigations, the numerous complaints filed against them, and the many individual notice letters sent by consumers within a reasonable amount of time after the allegations of Class Vehicle defects became public. Moreover, Plaintiffs sent a second notice letter pursuant to Alaska Stat. § 45.50.535 to all Defendants on October 11, 2017. Because Defendants failed to remedy their unlawful conduct within the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Alaska State Class are entitled.

**ALASKA COUNT II:
Breach of Express Warranty
Alaska Stat. §§ 45.02.313 and 45.12.210
(On Behalf of the Alaska State Class)**

382. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

383. This count is brought on behalf of the Alaska State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

384. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11), and a “seller” of motor vehicles under Alaska Stat. § 45.02.103(a)(4).

385. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Alaska Stat. § 45.12.103(a)(16).

386. The Class Vehicles are and were at all relevant times “goods” within the meaning of Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).

387. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

388. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Alaska State Class members regarding the performance and emission controls of their vehicles.

389. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1 390. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
2 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 391. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 392. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 393. As manufacturers of light-duty vehicles, Defendants were required to provide
22 these warranties to purchasers or lessees of Class Vehicles.

23 394. Defendants’ warranties formed a basis of the bargain that was reached when
24 Alaska State Class members purchased or leased Class Vehicles that are equipped with a defeat
25 device and non-compliant emission systems.

26 395. Despite the existence of warranties, Defendants failed to inform Alaska State Class
27 members that the Class Vehicles were intentionally designed and manufactured to be out of
28

1 compliance with applicable state and federal emissions laws, and failed to fix the defective
2 emission components free of charge.

3 396. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 397. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 398. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy
10 is insufficient to make Alaska State Class members whole and because Defendants have failed
11 and/or have refused to adequately provide the promised remedies within a reasonable time.

12 399. Accordingly, recovery by the Alaska State Class members is not restricted to the
13 limited warranty promising to repair and correct Defendants' defect in materials and
14 workmanship, and they seek all remedies as allowed by law.

15 400. Also, as alleged in more detail herein, at the time Defendants warranted and sold
16 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
17 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. Alaska State Class members were therefore induced
19 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 401. Moreover, many of the injuries flowing from the Class Vehicles cannot be
21 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
22 and workmanship fails in its essential purpose as many incidental and consequential damages
23 have already been suffered because of Defendants' fraudulent conduct as alleged herein, and
24 because of its failure and/or continued failure to provide such limited remedy within a reasonable
25 time, and any limitation on the Alaska State Class members' remedies would be insufficient to
26 make them whole.

27 402. Finally, because of Defendants' breach of warranty as set forth herein, Alaska
28 State Class members assert, as additional and/or alternative remedies, the revocation of

1 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 2 currently owned or leased, and for such other incidental and consequential damages as allowed.

3 403. Defendants were provided notice of these issues by numerous complaints filed
 4 against them, including the instant Complaint, within a reasonable amount of time.

5 404. As a direct and proximate result of Defendants' breach of express warranties,
 6 Alaska State Class members have been damaged in an amount to be determined at trial.

7 **ALASKA COUNT III:**
 8 **Breach of Implied Warranty of Merchantability**
 9 **Alaska Stat. §§ 45.02.314 and 45.12.212**
 10 **(On Behalf of the Alaska State Class)**

11 405. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 12 paragraphs as though fully set forth herein.

13 406. This count is brought on behalf of the Alaska State Class against the Volkswagen
 14 and Audi Defendants (collectively for this count, "Defendants").

15 407. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 16 vehicles under Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11), and a "seller" of motor
 17 vehicles under Alaska Stat. § 45.02.103(a)(4).

18 408. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 19 of motor vehicles under Alaska Stat. § 45.12.103(a)(16).

20 409. The Class Vehicles are and were at all relevant times "goods" within the meaning
 21 of Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).

22 410. A warranty that the Class Vehicles were in merchantable condition and fit for the
 23 ordinary purpose for which vehicles are used is implied by law pursuant to Alaska Stat.
 24 §§ 45.02.314 and 45.12.212.

25 411. These Class Vehicles, when sold or leased and at all times thereafter, were not in
 26 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
 27 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
 28 device and do not comply with federal and state emissions standards, rendering certain emissions
 functions inoperative.

412. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

413. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Alaska State Class members have been damaged in an amount to be proven at trial.

ARIZONA COUNT I:
Violations of the Arizona Consumer Fraud Act
Ariz. Rev. Stat. § 44-1521, *et seq.*
(On Behalf of the Arizona State Class)

414. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.

415. Plaintiff Scott Snyder (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the Arizona State Class against all Defendants.

416. Defendants, Plaintiff, and the Arizona State Class members are “persons” within the meaning of the Arizona Consumer Fraud Act (“Arizona CFA”), Ariz. Rev. Stat. § 44-1521(6).

417. The Class Vehicles are “merchandise” within the meaning of Ariz. Rev. Stat. § 44-1521(5).

418. The Arizona CFA provides that “[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, ... misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale ... of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.” Ariz. Rev. Stat. § 44-1522(A).

419. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing an illegal defeat device on the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit grossly larger

1 quantities of noxious CO₂ gasses. The result was what Defendants intended—the Class Vehicles
2 passed emissions testing by way of deliberately induced false readings.

3 420. Plaintiff and Arizona State Class members had no way of discerning that
4 Defendants' representations were false and misleading because Defendants' defeat device
5 software was extremely sophisticated technology. Plaintiff and Arizona State Class members did
6 not and could not unravel Defendants' deception on their own.

7 421. Defendants thus violated the Arizona CFA by, at minimum: employing deception,
8 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
9 any material fact with intent that others rely upon such concealment, suppression or omission, in
10 connection with the sale of Class Vehicles.

11 422. Defendants intentionally and knowingly misrepresented material facts regarding
12 the Class Vehicles with intent to mislead Plaintiff and the Arizona State Class.

13 423. Defendants knew or should have known that their conduct violated the Arizona
14 CFA.

15 424. Defendants owed Plaintiff and the Arizona State Class a duty to disclose the
16 illegality, public health and safety risks, the true nature of the Class Vehicles, because
17 Defendants:

18 A. possessed exclusive knowledge that they were manufacturing, selling, and
19 distributing vehicles throughout the United States that did not comply with regulations;

20 B. intentionally concealed the foregoing from regulators, Plaintiff, and
21 Arizona State Class members; and/or

22 C. made incomplete representations about the Class Vehicles generally, and
23 the use of the defeat device in particular, while purposefully withholding material facts from
24 Plaintiff and/or Arizona State Class members that contradicted these representations.

25 425. Defendants' fraudulent use of the "defeat device" and its concealment of the true
26 characteristics of the Class Vehicles' fuel consumption and CO₂ emissions were material to
27 Plaintiff and the Arizona State Class.
28

1 433. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
2 of motor vehicles under Ariz. Rev. Stat. § 47-2a103(A)(16).

3 434. The Class Vehicles are and were at all relevant times “goods” within the meaning
4 of Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

5 435. In connection with the purchase or lease of each one of its new vehicles,
6 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
7 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
8 materials or workmanship.”

9 436. Defendants also made numerous representations, descriptions, and promises to
10 Plaintiffs and Arizona State Class members regarding the performance and emission controls of
11 their vehicles.

12 437. For example, as shown below, Defendants included in the warranty booklets for
13 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
14 so as to conform at the time of sale with all applicable regulations of the United States
15 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

25 438. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
26 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
27 Warranty.”
28

1 439. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 440. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 441. As manufacturers of light-duty vehicles, Defendants were required to provide
19 these warranties to purchasers or lessees of Class Vehicles.

20 442. Defendants' warranties formed a basis of the bargain that was reached when
21 Arizona State Class members purchased or leased Class Vehicles that are equipped with a defeat
22 device and non-compliant emission systems.

23 443. Despite the existence of warranties, Defendants failed to inform Arizona State
24 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
25 compliance with applicable state and federal emissions laws, and failed to fix the defective
26 emission components free of charge.

1 444. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 445. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 446. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy
8 is insufficient to make Arizona State Class members whole and because Defendants have failed
9 and/or have refused to adequately provide the promised remedies within a reasonable time.

10 447. Accordingly, recovery by the Arizona State Class members is not restricted to the
11 limited warranty promising to repair and correct Defendants' defect in materials and
12 workmanship, and they seek all remedies as allowed by law.

13 448. Also, as alleged in more detail herein, at the time Defendants warranted and sold
14 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
15 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. Arizona State Class members were therefore induced
17 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 449. Moreover, many of the injuries flowing from the Class Vehicles cannot be
19 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
20 and workmanship as many incidental and consequential damages have already been suffered
21 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
22 continued failure to provide such limited remedy within a reasonable time, and any limitation on
23 the Arizona State Class members' remedies would be insufficient to make them whole.

24 450. Finally, because of Defendants' breach of warranty as set forth herein, Arizona
25 State Class members assert, as additional and/or alternative remedies, the revocation of
26 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
27 currently owned or leased, and for such other incidental and consequential damages as allowed.
28

451. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

452. As a direct and proximate result of Defendants' breach of express warranties, Arizona State Class members have been damaged in an amount to be determined at trial.

**ARIZONA COUNT III:
Breach of Implied Warranty of Merchantability
Ariz. Rev. Stat. §§ 47-2314 and 47-2A212
(On Behalf of the Arizona State Class)**

453. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

454. Plaintiff Scott Snyder (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the Arizona State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

455. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2a103(c); and is a “seller” of motor vehicles under Ariz. Rev. Stat. § 47-2103(A)(4).

456. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Ariz. Rev. Stat. § 47-2a103(A)(16).

457. The Class Vehicles are and were at all relevant times “goods” within the meaning of Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

458. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ariz. Rev. Stat. §§ 47-2314 and 47-2a212.

459. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
2 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
3 testing by way of deliberately induced false readings.

4 468. Arkansas State Class members had no way of discerning that Defendants’
5 representations were false and misleading because Defendants’ defeat device software was
6 extremely sophisticated technology. Plaintiffs and Arkansas State Class members did not and
7 could not unravel Defendants’ deception on their own.

8 469. Defendants thus violated the Arkansas DTPA by, at minimum: representing that
9 Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;
10 representing that Class Vehicles are of a particular standard, quality, and grade when they are not;
11 advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing
12 that the subject of a transaction involving Class Vehicles has been supplied in accordance with a
13 previous representation when it has not.

14 470. The Clean Air Act and EPA regulations require that automobiles limit their
15 emissions output to specified levels. These laws are intended for the protection of public health
16 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
17 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
18 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
19 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
20 Arkansas DTPA.

21 471. Defendants intentionally and knowingly misrepresented material facts regarding
22 the Class Vehicles with intent to mislead Plaintiffs and the Arkansas State Class. Defendants
23 knew or should have known that their conduct violated the Arkansas DTPA.

24 472. Defendants owed Plaintiffs and the Arkansas State Class a duty to disclose the
25 illegality, public health and safety risks, the true nature of the Class Vehicles, because
26 Defendants:

27 A. possessed exclusive knowledge that they were manufacturing, selling, and
28 distributing vehicles throughout the United States that did not comply with regulations;

1 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles generally, and
4 the use of the defeat device in particular, while purposefully withholding material facts from
5 Plaintiffs that contradicted these representations.

6 473. Defendants' fraudulent use of the "defeat device" and its concealment of the true
7 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
8 Plaintiffs and the Arkansas State Class.

9 474. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
12 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

13 475. Defendants' violations present a continuing risk to Plaintiffs as well as to the
14 general public. Defendants' unlawful acts and practices complained of herein affect the public
15 interest.

16 476. Plaintiffs and the Arkansas State Class suffered ascertainable loss and actual
17 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
18 of and failure to disclose material information. Plaintiffs and the Arkansas State Class members
19 who purchased or leased the Class Vehicles would not have purchased or leased them at all
20 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
21 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
22 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
23 their customers to refrain from unfair and deceptive practices under the Arkansas DTPA. All
24 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
25 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
26 Defendants' business.

27 477. As a direct and proximate result of Defendants' violations of the Arkansas DTPA,
28 Plaintiffs and the Arkansas State Class have suffered injury-in-fact and/or actual damage.

1 487. For example, as shown below, Defendants included in the warranty booklets for
 2 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
 3 so as to conform at the time of sale with all applicable regulations of the United States
 4 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

14 488. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
 15 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
 16 Warranty.”

17 489. The EPA requires vehicle manufacturers to provide a Performance Warranty with
 18 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
 19 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
 20 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
 21 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
 22 emission control components are covered for the first eight years or 80,000 miles (whichever
 23 comes first). These major emission control components subject to the longer warranty include the
 24 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
 25 device or computer.

26 490. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
 27 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
 28 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The

1 Design and Defect Warranty required by the EPA covers repair of emission control or emission
2 related parts, which fail to function or function improperly because of a defect in materials or
3 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
4 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
5 comes first.

6 491. As manufacturers of light-duty vehicles, Defendants were required to provide
7 these warranties to purchasers or lessees of Class Vehicles.

8 492. Defendants' warranties formed a basis of the bargain that was reached when
9 Arkansas State Class members purchased or leased Class Vehicles that are equipped with a defeat
10 device and non-compliant emission systems.

11 493. Despite the existence of warranties, Defendants failed to inform Arkansas State
12 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
13 compliance with applicable state and federal emissions laws, and failed to fix the defective
14 emission components free of charge.

15 494. Defendants breached the express warranty promising to repair and correct
16 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
17 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

18 495. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile here.

20 496. Furthermore, the limited warranty promising to repair and correct Defendants'
21 defect in materials and workmanship fails in its essential purpose because the contractual remedy
22 is insufficient to make Arkansas State Class members whole and because Defendants have failed
23 and/or have refused to adequately provide the promised remedies within a reasonable time.

24 497. Accordingly, recovery by the Arkansas State Class members is not restricted to the
25 limited warranty promising to repair and correct Defendants' defect in materials and
26 workmanship, and they seek all remedies as allowed by law.

27 498. Also, as alleged in more detail herein, at the time Defendants warranted and sold
28 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did

1 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
 2 material facts regarding the Class Vehicles. Arkansas State Class members were therefore
 3 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

4 499. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 5 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
 6 and workmanship as many incidental and consequential damages have already been suffered
 7 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
 8 continued failure to provide such limited remedy within a reasonable time, and any limitation on
 9 the Arkansas State Class members' remedies would be insufficient to make them whole.

10 500. Finally, because of Defendants' breach of warranty as set forth herein, Arkansas
 11 State Class members assert, as additional and/or alternative remedies, the revocation of
 12 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 13 currently owned or leased, and for such other incidental and consequential damages as allowed.

14 501. Defendants were provided notice of these issues by numerous complaints filed
 15 against them, including the instant Complaint, within a reasonable amount of time.

16 502. As a direct and proximate result of Defendants' breach of express warranties,
 17 Arkansas State Class members have been damaged in an amount to be determined at trial.

18 **ARKANSAS COUNT III:**
 19 **Breach of Implied Warranty of Merchantability**
 20 **Ark. Code Ann. §§ 4-2-314 and 4-2A-212**
(On Behalf of the Arkansas State Class)

21 503. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 22 paragraphs as though fully set forth herein.

23 504. This count is brought on behalf of the Arkansas State Class against the
 24 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

25 505. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 26 vehicles under Ark. Code §§ 4-2-104(1) and 4-2A-103(3), and "seller[s]" of motor vehicles under
 27 § 4-2-103(1)(d).
 28

1 equipped with “defeat devices.” These defeat devices are designed to secretly limit emissions and
2 increase fuel efficiency when the vehicles are being subject to regulatory emissions and fuel
3 efficiency testing. However, when the Class Vehicles are in regular use on the road, they emit a
4 substantially increased amount of noxious gasses.

5 515. Defendants engaged in unfair or deceptive acts or practices when, in the course of
6 its business it, among other acts and practices, knowingly made materially incomplete
7 representations as to the characteristics, uses and benefits of the Class Vehicles.

8 516. In the various channels of information through which Defendants sold Class
9 Vehicles, Defendants failed to disclose material information concerning the Class Vehicles,
10 which it had a duty to disclose. Defendants had a duty to disclose the defect because, as detailed
11 above, (a) Defendants knew about the defeat device equipped on the Class Vehicles; (b)
12 Defendants had exclusive knowledge of material facts not known to the general public, Plaintiffs,
13 or the other California State Class members; and (c) Defendants actively concealed material facts
14 concerning the defeat device from the general public, Plaintiffs, and the California State Class
15 members. As detailed above, Defendants knew the information concerning the defect at the time
16 of advertising and selling the Class Vehicles, all of which was intended to induce consumers to
17 purchase the Class Vehicles.

18 517. Defendants intended for the Plaintiffs and the other California State Class
19 members to rely on it to provide adequately designed, and adequately manufactured automobiles
20 and to honestly and accurately reveal the problems described throughout this Complaint.

21 518. Defendants intentionally failed or refused to disclose the defect to consumers.

22 519. Defendants’ conduct and deceptive omissions were intended to induce Plaintiffs
23 and the other California State Class members to believe that the Class Vehicles were adequately
24 designed and adequately manufactured automobiles.

25 520. Defendants’ conduct constitutes unfair acts or practices as defined by the
26 California Consumers Legal Remedies Act (the “CLRA”).
27
28

1 521. Plaintiffs and the other California State Class members have suffered injury in fact
2 and actual damages resulting from Defendants' material omissions because they paid inflated
3 purchase prices for the Class Vehicles.

4 522. Plaintiffs and the California State Class seek an order enjoining Defendants' unfair
5 or deceptive acts or practices, equitable relief, an award of attorneys' fees and costs under Cal.
6 Civ. Code § 1780(e), and any other just and proper relief available under the CLRA.

7 523. On February 21, 2017, Plaintiff Vinod Marur sent notice letters to Volkswagen
8 Group of America, Inc. and Audi of America, LLC complying with Cal. Civ. Code § 1780(b).
9 Plaintiffs sent another notice letter pursuant to Cal. Civ. Code § 1780(b) to all Defendants on
10 October 11, 2017. Additionally, all Defendants were provided notice of the issues raised in this
11 count and this Complaint by the governmental investigations, the numerous complaints filed
12 against them, and the many individual notice letters sent by consumers within a reasonable
13 amount of time after the allegations of Class Vehicle defects became public. Because Defendants
14 failed to remedy their unlawful conduct within the requisite time period, Plaintiff seek all
15 damages and relief to which Plaintiffs and the California State Class are entitled.

16
17 **CALIFORNIA COUNT II:**
18 **Violations of the California Unfair Competition Law**
19 **Cal. Bus. & Prof. Code § 17200 *et seq.***
20 **(On Behalf of the California State Class)**

21 524. Plaintiffs incorporate by reference each preceding paragraph as though fully set
22 forth herein.

23 525. Plaintiffs Hector Castillo, Russell Green, Jonathan Hecker, Vinod Marur, Scott
24 Snyder, and Frank Edwin Thompson (for the purpose of this count, "Plaintiffs") bring this count
25 on behalf of themselves and the California State Class against all Defendants.

26 526. California Business and Professions Code § 17200 prohibits any "unlawful, unfair,
27 or fraudulent business act or practices." Defendants have engaged in unlawful, fraudulent, and
28 unfair business acts and practices in violation of the UCL.

527. Defendants' conduct, as described herein, was and is in violation of the UCL.
Defendants' conduct violates the UCL in at least the following ways:

1 A. by knowingly and intentionally concealing from Plaintiffs and the other
2 California State Class members that the Class Vehicles suffer from a design defect while
3 obtaining money from Plaintiffs and California State Class members;

4 B. by marketing Class Vehicles as possessing functional and defect-free,
5 EPA-compliant engine systems;

6 C. by purposefully installing an illegal “defeat device” in the Class Vehicles
7 to fraudulently cause Class Vehicles to pass emissions tests when in truth and fact they did not
8 pass such tests;

9 D. by violating federal laws, including the Clean Air Act; and

10 E. by violating other California laws, including California laws governing
11 vehicle emissions and emission testing requirements.

12 528. Defendants’ misrepresentations and omissions alleged herein caused Plaintiffs and
13 the other California State Class members to make their purchases or leases of their Class
14 Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other California State
15 Class members would not have purchased or leased these vehicles, would not have purchased or
16 leased these Class Vehicles at the prices they paid, and/or would have purchased or leased less
17 expensive alternative vehicles that did not contain a defeat device that failed to comply with
18 emissions standards.

19 529. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen
20 and Audi’s unfair and deceptive conduct, as alleged herein. Bosch knew or should have known
21 that Volkswagen and Audi would use and had used the Bosch technology as an emission defeat
22 device, and in fact helped it do so. Without Bosch’s complicity and silence, Volkswagen and
23 Audi could not have perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and
24 Bosch’s actions themselves constitute fraudulent, deceptive, and unfair practices.

25 530. Accordingly, Plaintiffs and the other California State Class members have suffered
26 ascertainable loss and actual damages as a direct and proximate result of Defendants’
27 misrepresentations and their concealment of and failure to disclose material information.
28

1 536. Defendants have violated § 17500 because the misrepresentations and omissions
2 regarding the safety, reliability, and functionality of Class Vehicles as set forth in this Complaint
3 were material and likely to deceive a reasonable consumer.

4 537. Plaintiffs and the other California State Class members have suffered an injury in
5 fact, including the loss of money or property, as a result of Defendants' unfair, unlawful,
6 and/or deceptive practices. In purchasing or leasing their Class Vehicles, Plaintiffs and the other
7 California State Class members relied on the misrepresentations and/or omissions of Defendants
8 with respect to the safety, performance and reliability of the Class Vehicles. Defendants'
9 representations turned out not to be true because the Class Vehicles are distributed with faulty
10 and defective engine systems, rendering certain safety and emissions functions inoperative. Had
11 Plaintiffs and the other California State Class members known this, they would not have
12 purchased or leased their Class Vehicles and/or paid as much for them. Accordingly, Plaintiffs
13 and the other Class members overpaid for their Class Vehicles and did not receive the benefit of
14 their bargain.

15 538. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
16 conduct of Defendants business. Defendants' wrongful conduct is part of a pattern or generalized
17 course of conduct that is still perpetuated and repeated, both in the State of California and
18 nationwide.

19 539. Plaintiffs, individually and on behalf of the other California State Class members,
20 requests that this Court enter such orders or judgments as may be necessary to enjoin Defendants
21 from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and
22 the other California State Class members any money Defendants acquired by unfair competition,
23 including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

24 **CALIFORNIA COUNT IV:**
25 **Breach of Express Warranty**
26 **Cal. Com. Code §§ 2313 and 10210**
 (On Behalf of the California State Class)

27 540. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
28 fully set forth herein.

1 541. Plaintiffs Hector Castillo, Russell Green, Jonathan Hecker, Vinod Marur, Scott
2 Snyder, and Frank Edwin Thompson (for the purpose of this count, “Plaintiffs”) bring this count
3 on behalf of themselves and the California State Class against the Volkswagen and Audi
4 Defendants (collectively for this count, “Defendants”).

5 542. Defendants are and were at all relevant times “merchant[s]” with respect to motor
6 vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of motor vehicles under
7 § 2103(1)(d).

8 543. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
9 of motor vehicles under Cal. Com. Code § 10103(a)(16).

10 544. The Class Vehicles are and were at all relevant times “goods” within the meaning
11 of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

12 545. In connection with the purchase or lease of each one of its new vehicles,
13 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
14 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
15 materials or workmanship.”

16 546. Defendants also made numerous representations, descriptions, and promises to
17 Plaintiffs and California State Class members regarding the performance and emission controls of
18 their vehicles.

19 547. For example, as shown below, Defendants included in the warranty booklets for
20 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
21 so as to conform at the time of sale with all applicable regulations of the United States
22 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

548. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

549. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

550. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 551. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 552. Defendants' warranties formed a basis of the bargain that was reached when
6 California State Class members purchased or leased Class Vehicles that are equipped with a
7 defeat device and non-compliant emission systems.

8 553. Despite the existence of warranties, Defendants failed to inform California State
9 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 554. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 555. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 556. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make California State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 557. Accordingly, recovery by the California State Class members is not restricted to
22 the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 558. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. California State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 567. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

3 568. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Cal. Com. Code
5 §§ 2314 and 10212.

6 569. These Class Vehicles, when sold or leased and at all times thereafter, were not in
7 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
8 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
9 device and do not comply with federal and state emissions standards, rendering certain emissions
10 functions inoperative.

11 570. Defendants were provided notice of these issues by the investigations of the EPA
12 and California state regulators, and numerous complaints filed against it including the instant
13 complaint, within a reasonable amount of time.

14 571. As a direct and proximate result of Defendants’ breach of the implied warranty of
15 merchantability, California State Class members have been damaged in an amount to be proven at
16 trial.

17 **CALIFORNIA COUNT VI:**
18 **Violation of Song-Beverly Consumer Warranty Act, Breach of Implied Warranty**
19 **Cal Civ. Code § 1790, *et seq.***
 (On Behalf of the California State Class)

20 572. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
21 set forth herein.

22 573. Plaintiffs Hector Castillo, Russell Green, Jonathan Hecker, Vinod Marur, Scott
23 Snyder, and Frank Edwin Thompson (for the purpose of this count, “Plaintiffs”) bring this count
24 on behalf of themselves and the California State Class against the Volkswagen and Audi
25 Defendants (collectively for this count, “Defendants”).

26 574. Plaintiffs and the other members of the California State Class who purchased Class
27 Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791.
28

1 575. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
2 § 1791(a).

3 576. Defendants are the “manufacturer[s]” of the Class Vehicles within the meaning of
4 Cal. Civ. Code § 1791(j).

5 577. Defendants impliedly warranted to Plaintiffs and the other members of the
6 California State Class that the Class Vehicles were “merchantable” within the meaning of Cal.
7 Civ. Code §§ 1791.1(a) & 1792; however, the Class Vehicles do not have the quality that a buyer
8 would reasonably expect.

9 578. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or
10 “implied warranty that goods are merchantable” means that the consumer goods meet each of the
11 following:

- 12 A. Pass without objection in the trade under the contract description.
- 13 B. Are fit for the ordinary purposes for which such goods are used.
- 14 C. Are adequately contained, packaged, and labeled.
- 15 D. Conform to the promises or affirmations of fact made on the container or
16 label.

17 579. The Class Vehicles would not pass without objection in the automotive trade
18 because they share a common design defect in that they are equipped with “defeat devices.”
19 These defeat devices are designed to secretly limit emissions and increase fuel efficiency when
20 the vehicles are being subject to regulatory emissions and fuel efficiency testing. However, when
21 the Class Vehicles are in regular use on the road, they emit a substantially increased amount of
22 noxious gasses.

23 580. Class Vehicles are not adequately labeled because the labeling fails to disclose the
24 fact that they are defective.

25 581. In the various channels of information through which Defendants sold Class
26 Vehicles, Defendants failed to disclose material information concerning the Class Vehicles,
27 which it had a duty to disclose. Defendants had a duty to disclose the defect because, as detailed
28 above: (a) Defendants knew about the defect; (b) Defendants had exclusive knowledge of

1 material facts not known to the general public, Plaintiffs, or the other California State Class
 2 members; and (c) Defendants actively concealed material facts concerning the fact that the Class
 3 Vehicles were equipped with defeat devices from the general public, Plaintiffs, and the California
 4 State Class members. As detailed above, Defendants knew the information concerning the defect
 5 at the time of advertising and selling the Class Vehicles, all of which was intended to induce
 6 consumers to purchase the Class Vehicles.

7 582. Defendants breached the implied warranty of merchantability by manufacturing
 8 and selling Class Vehicles that are defective. Furthermore, this defect has caused Plaintiffs and
 9 the other members of the California State Class to not receive the benefit of their bargain and
 10 have caused the Class Vehicles to depreciate in value.

11 583. Plaintiffs and the other members of the California State Class have been damaged
 12 as a result of the diminished value of Defendants' products.

13 584. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and other members of the
 14 California State Class are entitled to damages and other legal and equitable relief including, at
 15 their election, the purchase price of their Class Vehicles, or the overpayment or diminution in
 16 value of their Class Vehicles.

17 585. Under Cal. Civ. Code § 1794, Plaintiffs and the other members of the California
 18 State Class are entitled to costs and attorneys' fees.

19 **CALIFORNIA COUNT VII:**
 20 **Violation of the Song-Beverly Consumer Protection Act, Breach of Express Warranty**
 21 **Cal Civ. Code § 1790, *et seq.***
(On Behalf of the California State Class)

22 586. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
 23 set forth herein.

24 587. Plaintiffs Hector Castillo, Russell Green, Jonathan Hecker, Vinod Marur, Scott
 25 Snyder, and Frank Edwin Thompson (for the purpose of this count, "Plaintiffs") bring this count
 26 on behalf of themselves and the California State Class against the Volkswagen and Audi
 27 Defendants (collectively for this count, "Defendants").
 28

1 588. Plaintiffs and the other members of the California State Class who purchased or
2 leased the Class Vehicles in California are “buyers” within the meaning of California Civil Code
3 § 1791(b).

4 589. The Class Vehicles are “consumer goods” within the meaning of California Civil
5 Code § 1791(a).

6 590. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
7 California Civil Code § 1791(j).

8 591. Defendants made express warranties to Plaintiffs and the other members of the
9 California State Class within the meaning of California Civil Code §§ 1791.2 and 1793.2, as
10 described above.

11 592. As set forth above in detail, the Class Vehicles are inherently defective in that they
12 are equipped with “defeat devices.” These defeat devices are designed to secretly limit emissions
13 and increase fuel efficiency when the vehicles are being subject to regulatory emissions and fuel
14 efficiency testing. However, when the Class Vehicles are in regular use on the road, they emit a
15 substantially increased amount of noxious gasses. The installation of the defeat device
16 substantially impairs the use and value of the Class Vehicles to reasonable consumers.

17 593. As a result of Defendants’ breach of their express warranties, Plaintiffs and the
18 other members of the California State Class received goods whose defect substantially impairs
19 their value to Plaintiffs and the other members of the California State Class. Plaintiffs and the
20 other members of the California State Class have been damaged as a result of, *inter alia*, the
21 diminished value of Defendants’ products.

22 594. Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiffs and the other
23 members of the California State Class are entitled to damages and other legal and equitable relief
24 including, at their election, the purchase price of their Class Vehicles, or the overpayment or
25 diminution in value of their Class Vehicles.

26 595. Pursuant to California Civil Code § 1794, Plaintiffs are entitled to costs and
27 attorneys’ fees.
28

CALIFORNIA COUNT VIII:
Breach of Express California Emissions Warranties
Cal. Civ. Code § 1793.2, *et seq.*
(On Behalf of the California State Class)

596. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

597. Plaintiffs Hector Castillo, Russell Green, Jonathan Hecker, Vinod Marur, Scott Snyder, and Frank Edwin Thompson (for the purpose of this count, “Plaintiffs”) bring this count on behalf of themselves and the California State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

598. Each Class Vehicle is covered by express California Emissions Warranties as a matter of law. *See* Cal. Health & Safety Code § 43205; Cal. Code Regs. tit. 13, § 2037.

599. The express California Emissions Warranties generally provide “that the vehicle or engine is...[d]esigned, built, and equipped so as to conform with all applicable regulations adopted by the Air Resources Board.” *Id.* This provision applies without any time or mileage limitation. *See id.*

600. The California Emissions Warranties also specifically warrant consumers against any performance failure of the emissions control system for three years or 50,000 miles, whichever occurs first, and against any defect in any emission-related part for seven years or 70,000 miles, whichever occurs first. *See id.*

601. California law imposes express duties “on the manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty.” Cal. Civ. Code § 1793.2.

602. Among those duties, “[i]f the manufacturer or its representative in this state is unable to service or repair a new motor vehicle...to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle or promptly make restitution to the buyer” at the vehicle owner’s option. *See* Cal. Civ. Code § 1793.2(d)(2).

1 603. Class members are excused from the requirement to “deliver nonconforming
2 goods to the manufacturer’s service and repair facility within this state” because Defendants are
3 refusing to accept them and delivery of the California Vehicles “cannot reasonably be
4 accomplished.” Cal. Civ. Code § 1793.2(c).

5 604. This complaint is written notice of nonconformity to Defendants and “shall
6 constitute return of the goods.” *Id.*

7 605. California State Class members are excused from any requirement that they allow
8 a “reasonable number of attempts” to bring California Vehicles into conformity with their
9 California Emissions Warranties based on futility because FCA has no ability to do so at this
10 time.

11 606. In addition to all other damages and remedies, California State Class members are
12 entitled to “recover a civil penalty of up to two times the amount of damages” for the
13 aforementioned violation. *See* Cal. Civ. Code § 1794(e)(1).

14 **CALIFORNIA COUNT IX:**
15 **Failure to Recall/Retrofit**
16 **(On Behalf of the California State Class)**

17 607. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
18 fully set forth herein.

19 608. Plaintiffs Hector Castillo, Russell Green, Jonathan Hecker, Vinod Marur, Scott
20 Snyder, and Frank Edwin Thompson (for the purpose of this count, “Plaintiffs”) bring this count
21 on behalf of themselves and the California State Class against the Volkswagen and Audi
22 Defendants (collectively for this count, “Defendants”).

23 609. Defendants manufactured, marketed, distributed, sold, or otherwise placed into the
24 stream of U.S. commerce the Class Vehicles, as set forth above.

25 610. Defendants knew or reasonably should have known that the Class Vehicles were
26 dangerous when used in a reasonably foreseeable manner, and posed an unreasonable.

27 611. Defendants became aware that the Class Vehicles were dangerous when used in a
28 reasonably foreseeable manner, and posed an unreasonable after the Vehicles were sold.

612. Defendants failed to recall the Class Vehicles in a timely manner or warn of the dangers posed by Class Vehicles.

613. A reasonable manufacturer in same or similar circumstances would have timely and properly recalled the Class Vehicles.

614. Plaintiffs and California State Class members were harmed by Defendants' failure to recall the Class Vehicles properly and in a timely manner and, as a result, have suffered damages, caused by Defendants' ongoing failure to properly recall, retrofit, and fully repair the Class Vehicles.

615. Defendants' failure to timely recall the Class Vehicles was a substantial factor in causing the harm to Plaintiffs and California State Class members as alleged herein.

**COLORADO COUNT I:
Violations of the Colorado Consumer Protection Act
Colo. Rev. Stat. § 6-1-101 *et seq.*
(On Behalf of the Colorado State Class)**

616. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

617. Plaintiff Patricia Vance (for the purpose of this count, “Plaintiff”) brings this count on behalf of herself and the Colorado State Class against all Defendants.

618. Defendants are “person[s]” under § 6-1-102(6) of the Colorado Consumer Protection Act “Colorado CPA”), Col. Rev. Stat. § 6-1-101, *et seq.*

619. Plaintiff and Colorado State Class members are “consumers” for purposes of Col. Rev. Stat § 6-1-113(1)(a) who purchased or leased one or more Class Vehicles.

620. The Colorado CPA prohibits deceptive trade practices in the course of a person's business. Defendants engaged in deceptive trade practices prohibited by the Colorado CPA, including: (1) knowingly making a false representation as to the characteristics, uses, and benefits of the Class Vehicles that had the capacity or tendency to deceive Colorado State Class members; (2) representing that the Class Vehicles are of a particular standard, quality, and grade even though Defendants knew or should have known they are not; (3) advertising the Class Vehicles with the intent not to sell them as advertised; and (4) failing to disclose material information

1 concerning the Class Vehicles that was known to Defendants at the time of advertisement or sale
2 with the intent to induce Colorado State Class members to purchase, lease or retain the Class
3 Vehicles.

4 621. In the course of its business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
6 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
7 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
8 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
9 testing by way of deliberately induced false readings.

10 622. Colorado State Class members had no way of discerning that Defendants’
11 representations were false and misleading because Defendants’ defeat device software was
12 extremely sophisticated technology. Plaintiff and Colorado State Class members did not and
13 could not unravel Defendants’ deception on their own.

14 623. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
18 a transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 624. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
26 Colorado CPA.

27 625. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiff and the Colorado State Class.

1 626. Defendants knew or should have known that their conduct violated the Colorado
2 CPA.

3 627. Defendants owed Plaintiff and the Colorado State Class a duty to disclose the
4 illegality, public health and safety risks, the true nature of the Class Vehicles, because
5 Defendants:

6 A. possessed exclusive knowledge that they were manufacturing, selling, and
7 distributing vehicles throughout the United States that did not comply with regulations;

8 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
9 Class members; and/or

10 C. made incomplete representations about the Class Vehicles generally, and
11 the use of the defeat device in particular, while purposefully withholding material facts from
12 Plaintiff and/or Class members that contradicted these representations.

13 628. Defendants' fraudulent use of the "defeat device" and its concealment of the true
14 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
15 Plaintiff and the Colorado State Class.

16 629. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
18 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
19 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

20 630. Defendants' violations present a continuing risk to Plaintiff, Class members, as
21 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
22 the public interest.

23 631. Plaintiff and the Colorado State Class suffered ascertainable loss and actual
24 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
25 of and failure to disclose material information. Plaintiff and the Colorado State Class members
26 who purchased or leased the Class Vehicles would not have purchased or leased them at all
27 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
28 legal to sell—would have paid significantly less for them. Plaintiff and the Colorado State Class

1 members also suffered diminished value of their vehicles, as well as lost or diminished use.
 2 Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive
 3 practices under the Colorado CPA. All owners of Class Vehicles suffered ascertainable loss in the
 4 form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts
 5 and practices made in the course of Defendants' business.

6 **COLORADO COUNT II:**
 7 **Breach of Express Warranty**
 8 **Colo. Rev. Stat. §§ 4-2-313 and 4-2.5-210**
 9 **(On Behalf of the Colorado State Class)**

10 632. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 11 fully set forth herein.

12 633. Plaintiff Patricia Vance (for the purpose of this count, "Plaintiff") brings this count
 13 on behalf of herself and the Colorado State Class against the Volkswagen and Audi Defendants
 14 (collectively for this count, "Defendants").

15 634. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 16 vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and "sellers" of motor vehicles
 17 under § 4-2-103(1)(d).

18 635. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 19 of motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).

20 636. The Class Vehicles are and were at all relevant times "goods" within the meaning
 21 of Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).

22 637. In connection with the purchase or lease of each one of its new vehicles,
 23 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 24 occurs first. This warranty exists to cover "any repair to correct a manufacturers defect in
 25 materials or workmanship."

26 638. Defendants also made numerous representations, descriptions, and promises to
 27 Plaintiff and Colorado State Class members regarding the performance and emission controls of
 28 their vehicles.

639. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

640. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

641. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

642. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles’ emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The

1 Design and Defect Warranty required by the EPA covers repair of emission control or emission
2 related parts, which fail to function or function improperly because of a defect in materials or
3 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
4 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
5 comes first.

6 643. As manufacturers of light-duty vehicles, Defendants were required to provide
7 these warranties to purchasers or lessees of Class Vehicles.

8 644. Defendants' warranties formed a basis of the bargain that was reached when
9 Colorado State Class members purchased or leased Class Vehicles that are equipped with a defeat
10 device and non-compliant emission systems.

11 645. Despite the existence of warranties, Defendants failed to inform Colorado State
12 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
13 compliance with applicable state and federal emissions laws, and failed to fix the defective
14 emission components free of charge.

15 646. Defendants breached the express warranty promising to repair and correct
16 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
17 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

18 647. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile here.

20 648. Furthermore, the limited warranty promising to repair and correct Defendants'
21 defect in materials and workmanship fails in its essential purpose because the contractual remedy
22 is insufficient to make Colorado State Class members whole and because Defendants have failed
23 and/or have refused to adequately provide the promised remedies within a reasonable time.

24 649. Accordingly, recovery by the Colorado State Class members is not restricted to the
25 limited warranty promising to repair and correct Defendants' defect in materials and
26 workmanship, and they seek all remedies as allowed by law.

27 650. Also, as alleged in more detail herein, at the time Defendants warranted and sold
28 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did

1 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
 2 material facts regarding the Class Vehicles. Colorado State Class members were therefore
 3 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

4 651. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 5 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
 6 and workmanship as many incidental and consequential damages have already been suffered
 7 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
 8 continued failure to provide such limited remedy within a reasonable time, and any limitation on
 9 the Colorado State Class members' remedies would be insufficient to make them whole.

10 652. Finally, because of Defendants' breach of warranty as set forth herein, Colorado
 11 State Class members assert, as additional and/or alternative remedies, the revocation of
 12 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 13 currently owned or leased, and for such other incidental and consequential damages as allowed.

14 653. Defendants were provided notice of these issues by numerous complaints filed
 15 against them, including the instant Complaint, within a reasonable amount of time.

16 654. As a direct and proximate result of Defendants' breach of express warranties,
 17 Colorado State Class members have been damaged in an amount to be determined at trial.

18 **COLORADO COUNT III:**
 19 **Breach of Implied Warranty of Merchantability**
 20 **Colo. Rev. Stat. §§ 4-2-314 and 4-2.5-212**
(On Behalf of the Colorado State Class)

21 655. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 22 paragraphs as though fully set forth herein.

23 656. Plaintiff Patricia Vance (for the purpose of this count, "Plaintiff") brings this count
 24 on behalf of herself and the Colorado State Class against the Volkswagen and Audi Defendants
 25 (collectively for this count, "Defendants").

26 657. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 27 vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and "sellers" of motor vehicles
 28 under § 4-2-103(1)(d).

1 667. Defendants are “person[s]” within the meaning of Conn. Gen. Stat. § 42-110a(3).

2 668. Defendants engaged in “trade” or “commerce” within the meaning of Conn. Gen.
3 Stat. § 42-110a(4).

4 669. Defendants participated in deceptive trade practices that violated the Connecticut
5 UTPA as described herein.

6 670. In the course of its business, Defendants concealed and suppressed material facts
7 concerning the Class Vehicles. Defendants accomplished this by installing an illegal defeat device
8 the Class Vehicles that caused the vehicles to operate in a low emission test mode only during
9 emissions testing. During normal operations, the Class Vehicles would emit grossly larger
10 quantities of noxious CO₂ gasses. The result was what Defendants intended—the Class Vehicles
11 passed emissions testing by way of deliberately induced false readings.

12 671. Plaintiffs and Connecticut State Class members had no way of discerning that
13 Defendants’ representations were false and misleading because Defendants’ defeat device
14 software was extremely sophisticated technology. Plaintiffs and Connecticut State Class members
15 did not and could not unravel Defendants’ deception on their own.

16 672. Defendants thus violated the Connecticut UTPA by, at minimum: employing
17 deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or
18 omission of any material fact with intent that others rely upon such concealment, suppression or
19 omission, in connection with the sale of Class Vehicles.

20 673. Defendants intentionally and knowingly misrepresented material facts regarding
21 the Class Vehicles with intent to mislead Plaintiffs and the Connecticut State Class.

22 674. Defendants knew or should have known that their conduct violated the
23 Connecticut UTPA.

24 675. Defendants owed Plaintiffs and the Connecticut State Class a duty to disclose the
25 illegality, public health and safety risks, the true nature of the Class Vehicles, because
26 Defendants:

27 A. possessed exclusive knowledge that they were manufacturing, selling, and
28 distributing vehicles throughout the United States that did not comply with regulations;

1 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
2 Connecticut State Class members; and/or

3 C. made incomplete representations about the Class Vehicles generally, and
4 the use of the defeat device in particular, while purposefully withholding material facts from
5 Plaintiffs that contradicted these representations.

6 676. Defendants' fraudulent use of the "defeat device" and its concealment of the true
7 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
8 Plaintiffs and the Connecticut State Class.

9 677. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
12 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

13 678. Plaintiffs and the Connecticut State Class suffered ascertainable loss and actual
14 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
15 of and failure to disclose material information. Plaintiffs and the Connecticut State Class
16 members who purchased or leased the Class Vehicles would not have purchased or leased them at
17 all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles
18 rendered legal to sell—would have paid significantly less for them. Plaintiffs and the Connecticut
19 State Class also suffered diminished value of their vehicles, as well as lost or diminished use.

20 679. Plaintiffs and the Connecticut State Class seek monetary relief against Defendants
21 in an amount to be determined at trial. Plaintiffs and the Connecticut State Class also seek
22 punitive damages because Defendants engaged in aggravated and outrageous conduct with an evil
23 mind.

24 680. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
25 deceptive practices, attorneys' fees, and any other just and proper relief available under the
26 Connecticut CFA.

27 681. Defendants had an ongoing duty to all their customers to refrain from unfair and
28 deceptive practices under the Connecticut UTPA. All owners of Class Vehicles suffered

ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.

682. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

683. As a direct and proximate result of Defendants' violations of the Connecticut UTPA, Plaintiffs and the Connecticut State Class have suffered injury-in-fact and/or actual damage.

684. Plaintiffs and Class members are entitled to recover their actual damages, punitive damages, and attorneys' fees pursuant to Conn. Gen. Stat. § 42-110g. Defendants acted with a reckless indifference to another's rights or wanton or intentional violation to another's rights and otherwise engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights and safety of others.

**CONNECTICUT COUNT II:
Breach of Express Warranty
Conn. Gen. Stat. Ann. § 42A-2-313
(On Behalf of the Connecticut State Class)**

685. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

686. This count is brought on behalf of the Connecticut State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

687. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

688. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover "any repair to correct a manufacturers defect in materials or workmanship."

689. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Connecticut State Class members regarding the performance and emission controls of their vehicles.

690. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

691. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

692. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1 693. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 694. As manufacturers of light-duty vehicles, Defendants were required to provide
10 these warranties to purchasers or lessees of Class Vehicles.

11 695. Defendants' warranties formed a basis of the bargain that was reached when
12 Connecticut State Class members purchased or leased Class Vehicles that are equipped with a
13 defeat device and non-compliant emission systems.

14 696. Despite the existence of warranties, Defendants failed to inform Connecticut State
15 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
16 compliance with applicable state and federal emissions laws, and failed to fix the defective
17 emission components free of charge.

18 697. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 698. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 699. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy
25 is insufficient to make Connecticut State Class members whole and because Defendants have
26 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1 700. Accordingly, recovery by the Connecticut State Class members is not restricted to
2 the limited warranty promising to repair and correct Defendants' defect in materials and
3 workmanship, and they seek all remedies as allowed by law.

4 701. Also, as alleged in more detail herein, at the time Defendants warranted and sold
5 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
6 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Connecticut State Class members were therefore
8 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 702. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
11 and workmanship as many incidental and consequential damages have already been suffered
12 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
13 continued failure to provide such limited remedy within a reasonable time, and any limitation on
14 the Connecticut State Class members' remedies would be insufficient to make them whole.

15 703. Finally, because of Defendants' breach of warranty as set forth herein, Connecticut
16 State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 704. Defendants were provided notice of these issues by numerous complaints filed
20 against them, including the instant Complaint, within a reasonable amount of time.

21 705. As a direct and proximate result of Defendants' breach of express warranties,
22 Connecticut State Class members have been damaged in an amount to be determined at trial.

23 **CONNECTICUT COUNT III:**
24 **Breach of Implied Warranty of Merchantability**
25 **Conn. Gen. Stat. Ann. § 42A-2-314**
 (On Behalf of the Connecticut State Class)

26 706. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.
28

707. This count is brought on behalf of the Connecticut State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

708. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

709. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Conn. Gen. Stat. Ann. § 42a-2-314.

710. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

711. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

712. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Connecticut State Class members have been damaged in an amount to be proven at trial.

**DELAWARE COUNT I:
Violations of the Delaware Consumer Fraud Act
6 Del. Code § 2513 *et seq.*
(On Behalf of the Delaware State Class)**

713. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

714. This count is brought on behalf of the Delaware State Class against all Defendants.

715. Defendants are “person[s]” within the meaning of 6 Del. Code § 2511(7).

716. The Delaware Consumer Fraud Act (“Delaware CFA”) prohibits the “act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent

1 that others rely upon such concealment, suppression or omission, in connection with the sale,
2 lease or advertisement of any merchandise, whether or not any person has in fact been misled,
3 deceived or damaged thereby.” 6 Del. Code § 2513(a).

4 717. In the course of its business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
6 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
7 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
8 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
9 testing by way of deliberately induced false readings.

10 718. Delaware State Class members had no way of discerning that Defendants’
11 representations were false and misleading because Defendants’ defeat device software was
12 extremely sophisticated technology. Plaintiffs and Delaware State Class members did not and
13 could not unravel Defendants’ deception on their own.

14 719. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
18 a transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 720. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
26 Delaware CFA.

27 721. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiffs and the Delaware State Class.

722. Defendants knew or should have known that their conduct violated the Delaware CFA.

723. Defendants owed Plaintiffs and the Delaware State Class a duty to disclose the illegality, public health and safety risks, the true nature of the Class Vehicles, because Defendants:

A. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with regulations;

B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or Class members; and/or

C. made incomplete representations about the Class Vehicles generally, and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

724. Defendants' fraudulent use of the "defeat device" and its concealment of the true characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to Plaintiffs and the Delaware State Class.

725. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

726. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

727. Plaintiffs and the Delaware State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the Delaware State Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished

1 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 2 their customers to refrain from unfair and deceptive practices under the Delaware CFA. All
 3 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 4 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
 5 Defendants' business.

6 728. As a direct and proximate result of Defendants' violations of the Delaware CFA,
 7 Plaintiffs and the Delaware State Class have suffered injury-in-fact and/or actual damage.

8 729. Plaintiffs seek damages under the Delaware CFA for injury resulting from the
 9 direct and natural consequences of Defendants' unlawful conduct. *See, e.g., Stephenson v.*
 10 *Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiffs also seek an order enjoining
 11 Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and
 12 any other just and proper relief available under the Delaware CFA.

13 730. Defendants engaged in gross, oppressive or aggravated conduct justifying the
 14 imposition of punitive damages.

15 **DELAWARE COUNT II:**
 16 **Breach of Express Warranty**
 17 **6 Del. Code §§ 2-313 and 2A-210**
(On Behalf of the Delaware State Class)

18 731. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 19 fully set forth herein.

20 732. This count is brought on behalf of the Delaware State Class against the
 21 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

22 733. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 23 vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and "sellers" of motor vehicles under § 2-
 24 103(1)(d).

25 734. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 26 of motor vehicles under 6 Del. C. § 2A-103(1)(p).

27 735. The Class Vehicles are and were at all relevant times "goods" within the meaning
 28 of 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).

1 736. In connection with the purchase or lease of each one of its new vehicles,
2 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
3 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
4 materials or workmanship.”

5 737. Defendants also made numerous representations, descriptions, and promises to
6 Plaintiffs and Delaware State Class members regarding the performance and emission controls of
7 their vehicles.

8 738. For example, as shown below, Defendants included in the warranty booklets for
9 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
10 so as to conform at the time of sale with all applicable regulations of the United States
11 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. ("Audi"),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applica-
ble regulations of the United States Environ-
mental Protection Agency (EPA), and
- is free from defects in material and work-
manship which causes the vehicle to fail to
conform with EPA regulations for 2 years af-
ter the date of first use or delivery of the ve-
hicle to the original retail purchaser or origi-
nal lessee or until the vehicle has been driv-
en 24,000 miles, whichever occurs first.

21 739. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
22 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
23 Warranty.”

24 740. The EPA requires vehicle manufacturers to provide a Performance Warranty with
25 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
26 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
27 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
28 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major

1 emission control components are covered for the first eight years or 80,000 miles (whichever
2 comes first). These major emission control components subject to the longer warranty include the
3 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
4 device or computer.

5 741. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
6 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
7 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
8 Design and Defect Warranty required by the EPA covers repair of emission control or emission
9 related parts, which fail to function or function improperly because of a defect in materials or
10 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
11 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
12 comes first.

13 742. As manufacturers of light-duty vehicles, Defendants were required to provide
14 these warranties to purchasers or lessees of Class Vehicles.

15 743. Defendants' warranties formed a basis of the bargain that was reached when
16 Delaware State Class members purchased or leased Class Vehicles that are equipped with a defeat
17 device and non-compliant emission systems.

18 744. Despite the existence of warranties, Defendants failed to inform Delaware State
19 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
20 compliance with applicable state and federal emissions laws, and failed to fix the defective
21 emission components free of charge.

22 745. Defendants breached the express warranty promising to repair and correct
23 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
24 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

25 746. Affording Defendants a reasonable opportunity to cure their breach of written
26 warranties would be unnecessary and futile here.

27 747. Furthermore, the limited warranty promising to repair and correct Defendants'
28 defect in materials and workmanship fails in its essential purpose because the contractual remedy

1 is insufficient to make Delaware State Class members whole and because Defendants have failed
2 and/or have refused to adequately provide the promised remedies within a reasonable time.

3 748. Accordingly, recovery by the Delaware State Class members is not restricted to the
4 limited warranty promising to repair and correct Defendants' defect in materials and
5 workmanship, and they seek all remedies as allowed by law.

6 749. Also, as alleged in more detail herein, at the time Defendants warranted and sold
7 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
8 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. Delaware State Class members were therefore
10 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 750. Moreover, many of the injuries flowing from the Class Vehicles cannot be
12 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
13 and workmanship as many incidental and consequential damages have already been suffered
14 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
15 continued failure to provide such limited remedy within a reasonable time, and any limitation on
16 the Delaware State Class members' remedies would be insufficient to make them whole.

17 751. Finally, because of Defendants' breach of warranty as set forth herein, Delaware
18 State Class members assert, as additional and/or alternative remedies, the revocation of
19 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
20 currently owned or leased, and for such other incidental and consequential damages as allowed.

21 752. Defendants were provided notice of these issues by numerous complaints filed
22 against them, including the instant Complaint, within a reasonable amount of time.

23 753. As a direct and proximate result of Defendants' breach of express warranties,
24 Delaware State Class members have been damaged in an amount to be determined at trial.

**DELAWARE COUNT III:
Breach of Implied Warranty of Merchantability
6. Del. Code §§ 2-314 and 7-2A-212
(On Behalf of the Delaware State Class)**

754. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

755. This count is brought on behalf of the Delaware State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

756. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and “sellers” of motor vehicles under § 2-103(1)(d).

757. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under 6 Del. C. § 2A-103(1)(p).

758. The Class Vehicles are and were at all relevant times “goods” within the meaning of 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).

759. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 6 Del. C. §§ 2-314 and 2A-212.

760. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

761. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

762. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Delaware State Class members have been damaged in an amount to be proven at trial.

**DISTRICT OF COLUMBIA COUNT I:
Violations of the Consumer Protection Procedures Act
D.C. Code § 28-3901 *et seq.*
(On Behalf of the District of Columbia Class)**

763. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

764. This count is brought on behalf of the District of Columbia Class against all Defendants.

765. Defendants are “person[s]” under the Consumer Protection Procedures Act (“District of Columbia CPPA”), D.C. Code § 28-3901(a)(1).

766. Class members are “consumers,” as defined by D.C. Code § 28-3901(1)(2), who purchased or leased one or more Class Vehicles.

767. Defendants’ actions as set forth herein constitute “trade practices” under D.C. Code § 28-3901.

768. Defendants participated in unfair or deceptive acts or practices that violated the District of Columbia CPPA. By willfully failing to disclose and actively concealing the illegal defeat device, Defendants engaged in unfair or deceptive practices prohibited by the District of Columbia CPPA, D.C. Code § 28-3901, *et seq.*, including: (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as advertised; (4) representing that the subject of a transaction involving the Class Vehicles has been supplied in accordance with a previous representation when it has not; (5) misrepresenting as to a material fact which has a tendency to mislead; and (6) failing to state a material fact when such failure tends to mislead.

769. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of

1 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
2 testing by way of deliberately induced false readings.

3 770. District of Columbia Class members had no way of discerning that Defendants’
4 representations were false and misleading because Defendants’ defeat device software was
5 extremely sophisticated technology. Plaintiffs and District of Columbia Class members did not
6 and could not unravel Defendants’ deception on their own.

7 771. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
8 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
9 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
10 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
11 a transaction involving Class Vehicles has been supplied in accordance with a previous
12 representation when it has not.

13 772. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
17 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
18 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
19 District of Columbia CPPA.

20 773. Defendants intentionally and knowingly misrepresented material facts regarding
21 the Class Vehicles with intent to mislead Plaintiffs and the District of Columbia Class.

22 774. Defendants knew or should have known that their conduct violated the District of
23 Columbia CPPA.

24 775. Defendants owed Plaintiffs and the District of Columbia Class a duty to disclose
25 the illegality, public health and safety risks, the true nature of the Class Vehicles, because
26 Defendants:

27 A. possessed exclusive knowledge that they were manufacturing, selling, and
28 distributing vehicles throughout the United States that did not comply with regulations;

1 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles generally, and
4 the use of the defeat device in particular, while purposefully withholding material facts from
5 Plaintiffs that contradicted these representations.

6 776. Defendants' fraudulent use of the "defeat device" and its concealment of the true
7 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
8 Plaintiffs and the District of Columbia Class.

9 777. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
12 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

13 778. Defendants' violations present a continuing risk to Plaintiffs as well as to the
14 general public. Defendants' unlawful acts and practices complained of herein affect the public
15 interest.

16 779. Plaintiffs and the District of Columbia Class suffered ascertainable loss and actual
17 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
18 of and failure to disclose material information. Plaintiffs and the District of Columbia Class
19 members who purchased or leased the Class Vehicles would not have purchased or leased them at
20 all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles
21 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered
22 diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing
23 duty to all their customers to refrain from unfair and deceptive practices under the District of
24 Columbia CPPA. All owners of Class Vehicles suffered ascertainable loss in the form of the
25 diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and
26 practices made in the course of Defendants' business.

1 788. In connection with the purchase or lease of each one of its new vehicles,
 2 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 3 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 4 materials or workmanship.”

5 789. Defendants also made numerous representations, descriptions, and promises to
 6 Plaintiffs and District of Columbia Class members regarding the performance and emission
 7 controls of their vehicles.

8 790. For example, as shown below, Defendants included in the warranty booklets for
 9 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
 10 so as to conform at the time of sale with all applicable regulations of the United States
 11 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
 Volkswagen Group of America, Inc. (“Audi”),
 the authorized United States importer of Audi
 vehicles, warrants to the original retail pur-
 chaser or original lessee and any subsequent
 purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applica-
 ble regulations of the United States Environ-
 mental Protection Agency (EPA), and
- is free from defects in material and work-
 manship which causes the vehicle to fail to
 conform with EPA regulations for 2 years af-
 ter the date of first use or delivery of the ve-
 hicle to the original retail purchaser or origi-
 nal lessee or until the vehicle has been driv-
 en 24,000 miles, whichever occurs first.

22 791. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
 23 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
 24 Warranty.”

25 792. The EPA requires vehicle manufacturers to provide a Performance Warranty with
 26 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
 27 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
 28 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles (whichever
3 comes first). These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 793. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
8 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
9 Design and Defect Warranty required by the EPA covers repair of emission control or emission
10 related parts, which fail to function or function improperly because of a defect in materials or
11 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
12 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
13 comes first.

14 794. As manufacturers of light-duty vehicles, Defendants were required to provide
15 these warranties to purchasers or lessees of Class Vehicles.

16 795. Defendants' warranties formed a basis of the bargain that was reached when
17 District of Columbia Class members purchased or leased Class Vehicles that are equipped with a
18 defeat device and non-compliant emission systems.

19 796. Despite the existence of warranties, Defendants failed to inform District of
20 Columbia Class members that the Class Vehicles were intentionally designed and manufactured
21 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
22 defective emission components free of charge.

23 797. Defendants breached the express warranty promising to repair and correct
24 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
25 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

26 798. Affording Defendants a reasonable opportunity to cure their breach of written
27 warranties would be unnecessary and futile here.

1 799. Furthermore, the limited warranty promising to repair and correct Defendants’
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy
3 is insufficient to make District of Columbia Class members whole and because Defendants have
4 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

5 800. Accordingly, recovery by the District of Columbia Class members is not restricted
6 to the limited warranty promising to repair and correct Defendants’ defect in materials and
7 workmanship, and they seek all remedies as allowed by law.

8 801. Also, as alleged in more detail herein, at the time Defendants warranted and sold
9 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
10 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
11 material facts regarding the Class Vehicles. District of Columbia Class members were therefore
12 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

13 802. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of repairing and correcting Defendants’ defect in materials
15 and workmanship as many incidental and consequential damages have already been suffered
16 because of Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or
17 continued failure to provide such limited remedy within a reasonable time, and any limitation on
18 the District of Columbia Class members’ remedies would be insufficient to make them whole.

19 803. Finally, because of Defendants’ breach of warranty as set forth herein, District of
20 Columbia Class members assert, as additional and/or alternative remedies, the revocation of
21 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
22 currently owned or leased, and for such other incidental and consequential damages as allowed.

23 804. Defendants were provided notice of these issues by numerous complaints filed
24 against them, including the instant Complaint, within a reasonable amount of time.

25 805. As a direct and proximate result of Defendants’ breach of express warranties,
26 District of Columbia Class members have been damaged in an amount to be determined at trial.

**DISTRICT OF COLUMBIA COUNT III:
Breach of Implied Warranty of Merchantability
D.C. Code §§ 28:2-314 and 28:2A-212
(On Behalf of the District of Columbia Class)**

806. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

807. This count is brought on behalf of the District of Columbia Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

808. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under D.C. Code §§ 28:2-104(1) and 28:2A-103(a)(20), and “sellers” of motor vehicles under § 28:2-103(1)(d).

809. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under D.C. Code § 28:2A-103(a)(16).

810. The Class Vehicles are and were at all relevant times “goods” within the meaning of D.C. Code §§ 28:2-105(1) and 28:2A-103(a)(8).

811. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to D.C. Code §§ 28:2-314 and 28:2A-212.

812. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

813. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

814. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, District of Columbia Class members have been damaged in an amount to be proven at trial.

**FLORIDA COUNT I:
Violations of the Florida Unfair & Deceptive Trade Practices Act
Fla. Stat. § 501.201, *et seq.*
(On Behalf of the Florida State Class)**

815. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein

816. Plaintiffs Paul Joachimczyk, Allen Taylor, and Babu Thomas (for the purpose of this count, “Plaintiffs”) bring this count on behalf of themselves and the Florida State Class against all Defendants.

817. Plaintiffs are “consumers” within the meaning of the Florida Unfair and Deceptive Trade Practices Act (“FUDTPA”), Fla. Stat. § 501.203(7).

818. Defendants engaged in “trade or commerce” within the meaning of Fla. Stat. § 501.203(8).

819. FUDTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce ...” Fla. Stat. § 501.204(1). Defendants participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.

820. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

821. Florida State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and Florida State Class members did not and could not unravel Defendants’ deception on their own.

822. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class

1 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
2 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
3 a transaction involving Class Vehicles has been supplied in accordance with a previous
4 representation when it has not.

5 823. The Clean Air Act and EPA regulations require that automobiles limit their
6 emissions output to specified levels. These laws are intended for the protection of public health
7 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
8 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
9 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
10 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
11 FUDTPA.

12 824. Defendants intentionally and knowingly misrepresented material facts regarding
13 the Class Vehicles with intent to mislead Plaintiffs and the Florida State Class.

14 825. Defendants knew or should have known that their conduct violated the FUDTPA.

15 826. Defendants owed Plaintiffs and the Florida State Class a duty to disclose the
16 illegality, public health and safety risks, the true nature of the Class Vehicles, because
17 Defendants:

18 A. possessed exclusive knowledge that they were manufacturing, selling, and
19 distributing vehicles throughout the United States that did not comply with regulations;

20 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
21 Class members; and/or

22 C. made incomplete representations about the Class Vehicles generally, and
23 the use of the defeat device in particular, while purposefully withholding material facts from
24 Plaintiffs that contradicted these representations.

25 827. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
26 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
27 Plaintiffs and the Florida State Class.
28

1 828. Defendants' unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
3 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
4 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

5 829. Defendants' violations present a continuing risk to Plaintiffs as well as to the
6 general public. Defendants' unlawful acts and practices complained of herein affect the public
7 interest.

8 830. Plaintiffs and the Florida State Class suffered ascertainable loss and actual
9 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
10 of and failure to disclose material information. Plaintiffs and the Florida State Class members
11 who purchased or leased the Class Vehicles would not have purchased or leased them at all
12 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
13 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
14 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
15 their customers to refrain from unfair and deceptive practices under the FUDTPA. All owners of
16 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
17 a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants'
18 business.

19 831. As a direct and proximate result of Defendants' violations of the FUDTPA,
20 Plaintiffs and the Florida State Class have suffered injury-in-fact and/or actual damage.

21 832. Plaintiffs and the Florida State Class are entitled to recover their actual damages
22 under Fla. Stat. § 501.211(2) and attorneys' fees under Fla. Stat. § 501.2105(1).

23 833. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
24 deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief
25 available under the FUDTPA.
26
27
28

**FLORIDA COUNT II:
Breach of Express Warranty
F.S.A. §§ 672.313 and 680.21
(On Behalf of the Florida State Class)**

834. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

835. Plaintiffs Paul Joachimczyk, Allen Taylor, and Babu Thomas (for the purpose of this count, “Plaintiffs”) bring this count on behalf of themselves and the Florida State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

836. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a “seller” of motor vehicles under § 672.103(1)(d).

837. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under F.S.A. § 680.1031(1)(p).

838. The Class Vehicles are and were at all relevant times “goods” within the meaning of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

839. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

840. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Florida State Class members regarding the performance and emission controls of their vehicles.

841. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

842. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

843. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

844. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 845. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 846. Defendants' warranties formed a basis of the bargain that was reached when
6 Florida State Class members purchased or leased Class Vehicles that are equipped with a defeat
7 device and non-compliant emission systems.

8 847. Despite the existence of warranties, Defendants failed to inform Florida State
9 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 848. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 849. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 850. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Florida State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 851. Accordingly, recovery by the Florida State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 852. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Florida State Class members were therefore induced
28 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 particular standard, quality, or grade ... if they are of another,” and “[a]dvertising goods or
2 services with intent not to sell them as advertised,” Ga. Code. Ann. § 10-1-393(b).

3 869. In the course of its business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
5 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
6 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
7 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
8 testing by way of deliberately induced false readings.

9 870. Georgia State Class members had no way of discerning that Defendants’
10 representations were false and misleading because Defendants’ defeat device software was
11 extremely sophisticated technology. Plaintiffs and Georgia State Class members did not and could
12 not unravel Defendants’ deception on their own.

13 871. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
14 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
15 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
16 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
17 a transaction involving Class Vehicles has been supplied in accordance with a previous
18 representation when it has not.

19 872. The Clean Air Act and EPA regulations require that automobiles limit their
20 emissions output to specified levels. These laws are intended for the protection of public health
21 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
22 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
23 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
24 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
25 Georgia FBPA.

26 873. Defendants intentionally and knowingly misrepresented material facts regarding
27 the Class Vehicles with intent to mislead Plaintiffs and the Georgia State Class.
28

1 874. Defendants knew or should have known that their conduct violated the Georgia
2 FBPA.

3 875. Defendants owed Plaintiffs and the Georgia State Class a duty to disclose the
4 illegality, public health and safety risks, the true nature of the Class Vehicles, because
5 Defendants:

6 A. possessed exclusive knowledge that they were manufacturing, selling, and
7 distributing vehicles throughout the United States that did not comply with regulations;

8 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
9 Class members; and/or

10 C. made incomplete representations about the Class Vehicles generally, and
11 the use of the defeat device in particular, while purposefully withholding material facts from
12 Plaintiffs that contradicted these representations.

13 876. Defendants' fraudulent use of the "defeat device" and its concealment of the true
14 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
15 Plaintiffs and the Georgia State Class.

16 877. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
18 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
19 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

20 878. Defendants' violations present a continuing risk to Plaintiffs as well as to the
21 general public. Defendants' unlawful acts and practices complained of herein affect the public
22 interest.

23 879. Plaintiffs and the Georgia State Class suffered ascertainable loss and actual
24 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
25 of and failure to disclose material information. Plaintiffs and the Georgia State Class members
26 who purchased or leased the Class Vehicles would not have purchased or leased them at all
27 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
28 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished

1 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 2 their customers to refrain from unfair and deceptive practices under the Georgia FBPA. All
 3 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 4 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
 5 Defendants' business.

6 880. As a direct and proximate result of Defendants' violations of the Georgia FBPA,
 7 Plaintiffs and the Georgia State Class have suffered injury-in-fact and/or actual damage.

8 881. Plaintiffs and the Georgia State Class are entitled to recover damages and
 9 exemplary damages (for intentional violations) per Ga. Code. Ann. § 10-1-399(a).

10 882. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
 11 deceptive practices, attorneys' fees, and any other just and proper relief available under the
 12 Georgia FBPA per Ga. Code. Ann. § 10-1-399.

13 883. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
 14 LLC complying with Ga. Code Ann. § 10-1-399. Additionally, all Defendants were provided
 15 notice of the issues raised in this count and this Complaint by the governmental investigations,
 16 the numerous complaints filed against them, and the many individual notice letters sent by
 17 consumers within a reasonable amount of time after the allegations of Class Vehicle defects
 18 became public. Moreover, Plaintiffs sent a second notice letter pursuant to Ga. Code Ann. § 10-1-
 19 399 to all Defendants on October 11, 2017. Because Defendants failed to remedy their unlawful
 20 conduct within the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs
 21 and the Georgia State Class are entitled.

22 **GEORGIA COUNT II:**
 23 **Violations of Georgia's Uniform Deceptive Trade Practices Act**
 24 **Ga. Code Ann. § 10-1-370 *et seq.***
(On Behalf of the Georgia State Class)

25 884. Plaintiffs incorporate by reference each preceding paragraph as though fully set
 26 forth herein.

27 885. This count is brought on behalf of the Georgia State Class against the Volkswagen
 28 and Audi Defendants (collectively for this count, "Defendants").

1 886. Defendants, Plaintiffs, and the Georgia State Class are “persons” within the
2 meaning of Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”), Ga. Code.
3 Ann. § 10-1-371(5).

4 887. The Georgia UDTPA prohibits “deceptive trade practices,” which include the
5 “misrepresentation of standard or quality of goods or services,” and “engaging in any other
6 conduct which similarly creates a likelihood of confusion or of misunderstanding.” Ga. Code.
7 Ann. § 10-1-372(a).

8 888. In the course of its business, Defendants concealed and suppressed material facts
9 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
10 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
11 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
12 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
13 testing by way of deliberately induced false readings.

14 889. Georgia State Class members had no way of discerning that Defendants’
15 representations were false and misleading because Defendants’ defeat device software was
16 extremely sophisticated technology. Plaintiffs and Georgia State Class members did not and could
17 not unravel Defendants’ deception on their own.

18 890. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
19 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
20 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
21 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
22 a transaction involving Class Vehicles has been supplied in accordance with a previous
23 representation when it has not.

24 891. The Clean Air Act and EPA regulations require that automobiles limit their
25 emissions output to specified levels. These laws are intended for the protection of public health
26 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
27 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
28 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available

1 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
2 Georgia UDTPA.

3 892. Defendants intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the Georgia State Class.

5 893. Defendants knew or should have known that their conduct violated the Georgia
6 UDTPA.

7 894. Defendants owed Plaintiffs and the Georgia State Class a duty to disclose the
8 illegality, public health and safety risks, the true nature of the Class Vehicles, because
9 Defendants:

10 A. possessed exclusive knowledge that they were manufacturing, selling, and
11 distributing vehicles throughout the United States that did not comply with regulations;

12 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
13 Class members; and/or

14 C. made incomplete representations about the Class Vehicles generally, and
15 the use of the defeat device in particular, while purposefully withholding material facts from
16 Plaintiffs that contradicted these representations.

17 895. Defendants' fraudulent use of the "defeat device" and its concealment of the true
18 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
19 Plaintiffs and the Georgia State Class.

20 896. Defendants' unfair or deceptive acts or practices were likely to and did in fact
21 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
22 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
23 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

24 897. Defendants' violations present a continuing risk to Plaintiffs as well as to the
25 general public. Defendants' unlawful acts and practices complained of herein affect the public
26 interest.

27 898. Plaintiffs and the Georgia State Class suffered ascertainable loss and actual
28 damages as a direct and proximate result of Defendants' misrepresentations and its concealment

1 of and failure to disclose material information. Plaintiffs and the Georgia State Class members
 2 who purchased or leased the Class Vehicles would not have purchased or leased them at all
 3 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
 4 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
 5 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 6 their customers to refrain from unfair and deceptive practices under the Georgia UDTPA. All
 7 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 8 vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the course of
 9 Defendants’ business.

10 899. As a direct and proximate result of Defendants’ violations of the Georgia UDTPA,
 11 Plaintiffs and the Georgia State Class have suffered injury-in-fact and/or actual damage.

12 900. Plaintiffs seek an order enjoining Defendants’ unfair, unlawful, and/or deceptive
 13 practices, attorneys’ fees, and any other just and proper relief available under the Georgia
 14 UDTPA per Ga. Code. Ann § 10-1-373.

15 **GEORGIA COUNT III:**
 16 **Breach of Express Warranty**
Ga. Code Ann. §§ 11-2-313 and 11-2A-210
 17 **(On Behalf of the Georgia State Class)**

18 901. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 19 fully set forth herein.

20 902. This count is brought on behalf of the Georgia State Class against the Volkswagen
 21 and Audi Defendants (collectively for this count, “Defendants”).

22 903. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 23 vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles
 24 under § 11-2-103(1)(d).

25 904. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 26 of motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

27 905. The Class Vehicles are and were at all relevant times “goods” within the meaning
 28 of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

1 906. In connection with the purchase or lease of each one of its new vehicles,
2 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
3 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
4 materials or workmanship.”

5 907. Defendants also made numerous representations, descriptions, and promises to
6 Plaintiffs and Georgia State Class members regarding the performance and emission controls of
7 their vehicles.

8 908. For example, as shown below, Defendants included in the warranty booklets for
9 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
10 so as to conform at the time of sale with all applicable regulations of the United States
11 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applica-
ble regulations of the United States Environ-
mental Protection Agency (EPA), and
- is free from defects in material and work-
manship which causes the vehicle to fail to
conform with EPA regulations for 2 years af-
ter the date of first use or delivery of the ve-
hicle to the original retail purchaser or origi-
nal lessee or until the vehicle has been driv-
en 24,000 miles, whichever occurs first.

22 909. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
23 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
24 Warranty.”

25 910. The EPA requires vehicle manufacturers to provide a Performance Warranty with
26 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
27 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
28 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles (whichever
3 comes first). These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 911. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
8 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
9 Design and Defect Warranty required by the EPA covers repair of emission control or emission
10 related parts, which fail to function or function improperly because of a defect in materials or
11 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
12 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
13 comes first.

14 912. As manufacturers of light-duty vehicles, Defendants were required to provide
15 these warranties to purchasers or lessees of Class Vehicles.

16 913. Defendants' warranties formed a basis of the bargain that was reached when
17 Georgia State Class members purchased or leased Class Vehicles that are equipped with a defeat
18 device and non-compliant emission systems.

19 914. Despite the existence of warranties, Defendants failed to inform Georgia State
20 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
21 compliance with applicable state and federal emissions laws, and failed to fix the defective
22 emission components free of charge.

23 915. Defendants breached the express warranty promising to repair and correct
24 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
25 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

26 916. Affording Defendants a reasonable opportunity to cure their breach of written
27 warranties would be unnecessary and futile here.

1 917. Furthermore, the limited warranty promising to repair and correct Defendants'
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy
3 is insufficient to make Georgia State Class members whole and because Defendants have failed
4 and/or have refused to adequately provide the promised remedies within a reasonable time.

5 918. Accordingly, recovery by the Georgia State Class members is not restricted to the
6 limited warranty promising to repair and correct Defendants' defect in materials and
7 workmanship, and they seek all remedies as allowed by law.

8 919. Also, as alleged in more detail herein, at the time Defendants warranted and sold
9 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
10 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
11 material facts regarding the Class Vehicles. Georgia State Class members were therefore induced
12 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

13 920. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
15 and workmanship as many incidental and consequential damages have already been suffered
16 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
17 continued failure to provide such limited remedy within a reasonable time, and any limitation on
18 the Georgia State Class members' remedies would be insufficient to make them whole.

19 921. Finally, because of Defendants' breach of warranty as set forth herein, Georgia
20 State Class members assert, as additional and/or alternative remedies, the revocation of
21 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
22 currently owned or leased, and for such other incidental and consequential damages as allowed.

23 922. Defendants were provided notice of these issues by numerous complaints filed
24 against them, including the instant Complaint, within a reasonable amount of time.

25 923. As a direct and proximate result of Defendants' breach of express warranties,
26 Georgia State Class members have been damaged in an amount to be determined at trial.

**GEORGIA COUNT IV:
Breach of Implied Warranty of Merchantability
Ga. Code Ann. §§ 11-2-314 and 11-2A-212
(On Behalf of the Georgia State Class)**

924. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

925. This count is brought on behalf of the Georgia State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

926. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles under § 11-2-103(1)(d).

927. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

928. The Class Vehicles are and were at all relevant times “goods” within the meaning of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

929. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ga. Code Ann. §§ 11-2-314 and 11-2A-212.

930. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

931. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

932. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Georgia State Class members have been damaged in an amount to be proven at trial.

**HAWAII COUNT I:
Unfair and Deceptive Acts in Violation of Hawaii Law
Haw. Rev. Stat. § 480 *et seq.*
(On Behalf of the Hawaii State Class)**

933. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

934. This count is brought on behalf of the Hawaii State Class against all Defendants.

935. Defendants are “person[s]” under Haw. Rev. Stat. § 480-1.

936. Hawaii State Class members are “consumer[s]” as defined by Haw. Rev. Stat. § 480-1, who purchased or leased one or more Class Vehicles.

937. Defendants’ acts or practices as set forth above occurred in the conduct of trade or commerce.

938. The Hawaii Act § 480-2(a) prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...”

939. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

940. Hawaii State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and Hawaii State Class members did not and could not unravel Defendants’ deception on their own.

941. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of

1 a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 942. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Defendants violated federal law and therefore engaged in conduct that violates
9 Hawaii law.

10 943. Defendants intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Hawaii State Class.

12 944. Defendants knew or should have known that their conduct violated Hawaii law.

13 945. Defendants owed Plaintiffs and the Hawaii State Class a duty to disclose the
14 illegality, public health and safety risks, the true nature of the Class Vehicles, because
15 Defendants:

16 A. possessed exclusive knowledge that they were manufacturing, selling, and
17 distributing vehicles throughout the United States that did not comply with regulations;

18 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
19 Class members; and/or

20 C. made incomplete representations about the Class Vehicles generally, and
21 the use of the defeat device in particular, while purposefully withholding material facts from
22 Plaintiffs that contradicted these representations.

23 946. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
24 characteristics of the Class Vehicles’ fuel consumption and CO₂ emissions were material to
25 Plaintiffs and the Hawaii State Class.

26 947. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
27 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
28

1 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
2 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

3 948. Defendants' violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants' unlawful acts and practices complained of herein affect the public
5 interest.

6 949. Plaintiffs and the Hawaii State Class suffered ascertainable loss and actual
7 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
8 of and failure to disclose material information. Plaintiffs and the Hawaii State Class members
9 who purchased or leased the Class Vehicles would not have purchased or leased them at all
10 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
11 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
12 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
13 their customers to refrain from unfair and deceptive practices under Hawaii law. All owners of
14 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
15 a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants'
16 business.

17 **HAWAII COUNT II:**
18 **Breach of Express Warranty**
19 **Haw. Rev. Stat. §§ 490:2-313 and 490:2A-210**
20 **(On Behalf of the Hawaii State Class)**

21 950. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
22 fully set forth herein.

23 951. This count is brought on behalf of the Hawaii State Class against the Volkswagen
24 and Audi Defendants (collectively for this count, "Defendants").

25 952. Defendants are and were at all relevant times "merchant[s]" with respect to motor
26 vehicles under Haw. Rev. Stat. §§ 490:2-104(1) and 490:2A-103(b), and a "seller" of motor
27 vehicles under § 490:2-103(1)(d).

28 953. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
of motor vehicles under Haw. Rev. Stat. § 490:2A-103(a)(16).

1 954. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Haw. Rev. Stat. §§ 490:2-105(1) and 490:2A-103(a)(8).

3 955. In connection with the purchase or lease of each one of its new vehicles,
4 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
5 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
6 materials or workmanship.”

7 956. Defendants also made numerous representations, descriptions, and promises to
8 Plaintiffs and Hawaii State Class members regarding the performance and emission controls of
9 their vehicles.

10 957. For example, as shown below, Defendants included in the warranty booklets for
11 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
12 so as to conform at the time of sale with all applicable regulations of the United States
13 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

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24 958. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
25 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
26 Warranty.”

27 959. The EPA requires vehicle manufacturers to provide a Performance Warranty with
28 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for

1 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
2 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
3 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
4 emission control components are covered for the first eight years or 80,000 miles (whichever
5 comes first). These major emission control components subject to the longer warranty include the
6 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
7 device or computer.

8 960. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
9 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
10 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
11 Design and Defect Warranty required by the EPA covers repair of emission control or emission
12 related parts, which fail to function or function improperly because of a defect in materials or
13 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
14 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
15 comes first.

16 961. As manufacturers of light-duty vehicles, Defendants were required to provide
17 these warranties to purchasers or lessees of Class Vehicles.

18 962. Defendants' warranties formed a basis of the bargain that was reached when
19 Hawaii State Class members purchased or leased Class Vehicles that are equipped with a defeat
20 device and non-compliant emission systems.

21 963. Despite the existence of warranties, Defendants failed to inform Hawaii State
22 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
23 compliance with applicable state and federal emissions laws, and failed to fix the defective
24 emission components free of charge.

25 964. Defendants breached the express warranty promising to repair and correct
26 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
27 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.
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1 965. Affording Defendants a reasonable opportunity to cure their breach of written
2 warranties would be unnecessary and futile here.

3 966. Furthermore, the limited warranty promising to repair and correct Defendants'
4 defect in materials and workmanship fails in its essential purpose because the contractual remedy
5 is insufficient to make Hawaii State Class members whole and because Defendants have failed
6 and/or have refused to adequately provide the promised remedies within a reasonable time.

7 967. Accordingly, recovery by the Hawaii State Class members is not restricted to the
8 limited warranty promising to repair and correct Defendants' defect in materials and
9 workmanship, and they seek all remedies as allowed by law.

10 968. Also, as alleged in more detail herein, at the time Defendants warranted and sold
11 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
12 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
13 material facts regarding the Class Vehicles. Hawaii State Class members were therefore induced
14 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

15 969. Moreover, many of the injuries flowing from the Class Vehicles cannot be
16 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
17 and workmanship as many incidental and consequential damages have already been suffered
18 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
19 continued failure to provide such limited remedy within a reasonable time, and any limitation on
20 the Hawaii State Class members' remedies would be insufficient to make them whole.

21 970. Finally, because of Defendants' breach of warranty as set forth herein, Hawaii
22 State Class members assert, as additional and/or alternative remedies, the revocation of
23 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
24 currently owned or leased, and for such other incidental and consequential damages as allowed.

25 971. Defendants were provided notice of these issues by numerous complaints filed
26 against them, including the instant Complaint, within a reasonable amount of time.

27 972. As a direct and proximate result of Defendants' breach of express warranties,
28 Hawaii State Class members have been damaged in an amount to be determined at trial.

**HAWAII COUNT III:
Breach of Implied Warranty of Merchantability
Haw. Rev. Stat. §§ 490:2-314 and 490:2A-212
(On Behalf of the Hawaii State Class)**

973. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

974. This count is brought on behalf of the Hawaii State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

975. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Haw. Rev. Stat. §§ 490:2-104(1) and 490:2A-103(b), and a “seller” of motor vehicles under § 490:2-103(1)(d).

976. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Haw. Rev. Stat. § 490:2A-103(a)(16).

977. The Class Vehicles are and were at all relevant times “goods” within the meaning of Haw. Rev. Stat. §§ 490:2-105(1) and 490:2A-103(a)(8).

978. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Haw. Rev. Stat. §§ 490:2-314 and 490:2A-212.

979. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

980. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

981. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Hawaii State Class members have been damaged in an amount to be proven at trial.

IDAHO COUNT I:
Violations of the Idaho Consumer Protection Act
Idaho Code § 48-601 *et seq.*
(On Behalf of the Idaho State Class)

982. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

983. Plaintiff Daniel Satterlee (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the Idaho State Class against all Defendants.

984. Defendants are “person[s]” under the Idaho Consumer Protection Act (“Idaho CPA”), Idaho Code § 48-602(1).

985. Defendants’ acts or practices as set forth above occurred in the conduct of “trade” or “commerce” under Idaho Code § 48-602(2).

986. Defendants participated in misleading, false, or deceptive acts that violated the Idaho CPA.

987. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

988. Idaho State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiff and Idaho State Class members did not and could not unravel Defendants’ deception on their own.

989. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of

1 a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 990. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
9 Idaho CPA.

10 991. Defendants intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiff and the Idaho State Class.

12 992. Defendants knew or should have known that their conduct violated the Idaho CPA.

13 993. Defendants owed Plaintiff and the Idaho State Class a duty to disclose the
14 illegality, public health and safety risks, the true nature of the Class Vehicles, because
15 Defendants:

16 A. possessed exclusive knowledge that they were manufacturing, selling, and
17 distributing vehicles throughout the United States that did not comply with regulations;

18 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
19 Class members; and/or

20 C. made incomplete representations about the Class Vehicles generally, and
21 the use of the defeat device in particular, while purposefully withholding material facts from
22 Plaintiff and/or Class members that contradicted these representations.

23 994. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
24 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
25 Plaintiff and the Idaho State Class.

26 995. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
27 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
28

1 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
2 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

3 996. Defendants' violations present a continuing risk to Plaintiff, Idaho State Class
4 members, as well as to the general public. Defendants' unlawful acts and practices complained of
5 herein affect the public interest.

6 997. Plaintiff and the Idaho State Class suffered ascertainable loss and actual damages
7 as a direct and proximate result of Defendants' misrepresentations and its concealment of and
8 failure to disclose material information. Plaintiff and the Idaho State Class members who
9 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
10 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
11 sell—would have paid significantly less for them. Plaintiff and the Idaho State Class members
12 also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had
13 an ongoing duty to all their customers to refrain from unfair and deceptive practices under the
14 Idaho CPA. All owners of Class Vehicles suffered ascertainable loss in the form of the
15 diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and
16 practices made in the course of Defendants' business.

17 998. As a direct and proximate result of Defendants' violations of the Idaho CPA,
18 Plaintiff and the Idaho State Class have suffered injury-in-fact and/or actual damage.

19 999. Pursuant to Idaho Code § 48-608, Plaintiff and the Idaho State Class seek
20 monetary relief against Defendants measured as the greater of (a) actual damages in an amount to
21 be determined at trial and (b) statutory damages in the amount of \$1,000 for Plaintiff and each
22 Idaho State Class member.

23 1000. Plaintiff and the Idaho State Class also seek an order enjoining Defendants' unfair,
24 unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available
25 under the Idaho CPA.

26 1001. Plaintiff and the Idaho State Class also seek punitive damages against Defendants
27 because Defendants conduct evidences an extreme deviation from reasonable standards.
28 Defendants flagrantly, maliciously, and fraudulently misrepresented the safety and reliability of

1 the Class Vehicles, deceived Class members, concealed material facts that only they knew, and
 2 repeatedly promised Class members all vehicles were safe—all to avoid the expense and public
 3 relations nightmare of correcting a noxious flaw in the Class Vehicles. Defendants’ unlawful
 4 conduct constitutes malice, oppression, and fraud warranting punitive damages.

5 **IDAHO COUNT II:**
 6 **Breach of Express Warranty**
 7 **Idaho Code §§ 28-2-313 and 28-12-210**
 8 **(On Behalf of the Idaho State Class)**

9 1002. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 10 fully set forth herein.

11 1003. Plaintiff Daniel Satterlee (for the purpose of this count, “Plaintiff”) brings this
 12 count on behalf of himself and the Idaho State Class against the Volkswagen and Audi
 13 Defendants (collectively for this count, “Defendants”).

14 1004. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 15 vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and “sellers” of motor vehicles
 16 under § 28-2-103(1)(d).

17 1005. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 18 of motor vehicles under Idaho Code § 28-12-103(1)(p).

19 1006. The Class Vehicles are and were at all relevant times “goods” within the meaning
 20 of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).

21 1007. In connection with the purchase or lease of each one of its new vehicles,
 22 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 23 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 24 materials or workmanship.”

25 1008. Defendants also made numerous representations, descriptions, and promises to
 26 Plaintiff and Idaho State Class members regarding the performance and emission controls of their
 27 vehicles.

28 1009. For example, as shown below, Defendants included in the warranty booklets for
 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped

1 so as to conform at the time of sale with all applicable regulations of the United States
2 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

13 1010. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
14 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
15 Warranty.”

16 1011. The EPA requires vehicle manufacturers to provide a Performance Warranty with
17 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
18 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
19 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
20 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
21 emission control components are covered for the first eight years or 80,000 miles (whichever
22 comes first). These major emission control components subject to the longer warranty include the
23 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
24 device or computer.

25 1012. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
26 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
27 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
28 Design and Defect Warranty required by the EPA covers repair of emission control or emission

1 related parts, which fail to function or function improperly because of a defect in materials or
2 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
3 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
4 comes first.

5 1013. As manufacturers of light-duty vehicles, Defendants were required to provide
6 these warranties to purchasers or lessees of Class Vehicles.

7 1014. Defendants' warranties formed a basis of the bargain that was reached when Idaho
8 State Class members purchased or leased Class Vehicles that are equipped with a defeat device
9 and non-compliant emission systems.

10 1015. Despite the existence of warranties, Defendants failed to inform Idaho State Class
11 members that the Class Vehicles were intentionally designed and manufactured to be out of
12 compliance with applicable state and federal emissions laws, and failed to fix the defective
13 emission components free of charge.

14 1016. Defendants breached the express warranty promising to repair and correct
15 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
16 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

17 1017. Affording Defendants a reasonable opportunity to cure their breach of written
18 warranties would be unnecessary and futile here.

19 1018. Furthermore, the limited warranty promising to repair and correct Defendants'
20 defect in materials and workmanship fails in its essential purpose because the contractual remedy
21 is insufficient to make Idaho State Class members whole and because Defendants have failed
22 and/or have refused to adequately provide the promised remedies within a reasonable time.

23 1019. Accordingly, recovery by the Idaho State Class members is not restricted to the
24 limited warranty promising to repair and correct Defendants' defect in materials and
25 workmanship, and they seek all remedies as allowed by law.

26 1020. Also, as alleged in more detail herein, at the time Defendants warranted and sold
27 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
28 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed

1 material facts regarding the Class Vehicles. Idaho State Class members were therefore induced to
 2 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 1021. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 4 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
 5 and workmanship as many incidental and consequential damages have already been suffered
 6 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
 7 continued failure to provide such limited remedy within a reasonable time, and any limitation on
 8 the Idaho State Class members' remedies would be insufficient to make them whole.

9 1022. Finally, because of Defendants' breach of warranty as set forth herein, Idaho State
 10 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of
 11 the goods and the return to them the purchase or lease price of all Class Vehicles currently owned
 12 or leased, and for such other incidental and consequential damages as allowed.

13 1023. Defendants were provided notice of these issues by numerous complaints filed
 14 against them, including the instant Complaint, within a reasonable amount of time.

15 1024. As a direct and proximate result of Defendants' breach of express warranties,
 16 Idaho State Class members have been damaged in an amount to be determined at trial.

17 **IDAHO COUNT III:**
 18 **Breach of Implied Warranty of Merchantability**
 19 **Idaho Code §§ 28-2-314 and 28-12-212**
 20 **(On Behalf of the Idaho State Class)**

21 1025. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 22 paragraphs as though fully set forth herein.

23 1026. Plaintiff Daniel Satterlee (for the purpose of this count, "Plaintiff") brings this
 24 count on behalf of himself and the Idaho State Class against the Volkswagen and Audi
 25 Defendants (collectively for this count, "Defendants").

26 1027. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 27 vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and "sellers" of motor vehicles
 28 under § 28-2-103(1)(d).

1028. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Idaho Code § 28-12-103(1)(p).

1029. The Class Vehicles are and were at all relevant times “goods” within the meaning of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).

1030. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Idaho Code §§ 28-2-314 and 28-12-212.

1031. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1032. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1033. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Idaho State Class members have been damaged in an amount to be proven at trial.

**ILLINOIS COUNT I:
Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act
815 ILCS 505/1, *et seq.* and 720 ILCS 295/1a
(On Behalf of the Illinois State Class)**

1034. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1035. This count is brought on behalf of the Illinois State Class against all Defendants.

1036. Defendants are “person[s]” as that term is defined in 815 ILCS 505/1(c).

1037. Plaintiffs and the Illinois State Class are “consumers” as that term is defined in 815 ILCS 505/1(e).

1 1038. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois
2 CFA”) prohibits “unfair or deceptive acts or practices, including but not limited to the use or
3 employment of any deception, fraud, false pretense, false promise, misrepresentation or the
4 concealment, suppression or omission of any material fact, with intent that others rely upon the
5 concealment, suppression or omission of such material fact ... in the conduct of trade or
6 commerce ... whether any person has in fact been misled, deceived or damaged thereby.” 815
7 ILCS 505/2.

8 1039. In the course of its business, Defendants concealed and suppressed material facts
9 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
10 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
11 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
12 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
13 testing by way of deliberately induced false readings.

14 1040. Illinois State Class members had no way of discerning that Defendants’
15 representations were false and misleading because Defendants’ defeat device software was
16 extremely sophisticated technology. Plaintiffs and Illinois State Class members did not and could
17 not unravel Defendants’ deception on their own.

18 1041. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
19 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
20 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
21 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
22 a transaction involving Class Vehicles has been supplied in accordance with a previous
23 representation when it has not.

24 1042. The Clean Air Act and EPA regulations require that automobiles limit their
25 emissions output to specified levels. These laws are intended for the protection of public health
26 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
27 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
28 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available

1 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
2 Illinois CFA.

3 1043. Defendants intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the Illinois State Class.

5 1044. Defendants knew or should have known that their conduct violated the Illinois
6 CFA.

7 1045. Defendants owed Plaintiffs and the Illinois State Class a duty to disclose the
8 illegality, public health and safety risks, the true nature of the Class Vehicles, because
9 Defendants:

10 A. possessed exclusive knowledge that they were manufacturing, selling, and
11 distributing vehicles throughout the United States that did not comply with regulations;

12 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
13 Class members; and/or

14 C. made incomplete representations about the Class Vehicles generally, and
15 the use of the defeat device in particular, while purposefully withholding material facts from
16 Plaintiffs that contradicted these representations.

17 1046. Defendants' fraudulent use of the "defeat device" and its concealment of the true
18 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
19 Plaintiffs and the Illinois State Class.

20 1047. Defendants' unfair or deceptive acts or practices were likely to and did in fact
21 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
22 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
23 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

24 1048. Defendants' violations present a continuing risk to Plaintiffs as well as to the
25 general public. Defendants' unlawful acts and practices complained of herein affect the public
26 interest.

27 1049. Plaintiffs and the Illinois State Class suffered ascertainable loss and actual
28 damages as a direct and proximate result of Defendants' misrepresentations and its concealment

1 of and failure to disclose material information. Plaintiffs and the Illinois State Class members
 2 who purchased or leased the Class Vehicles would not have purchased or leased them at all
 3 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
 4 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
 5 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 6 their customers to refrain from unfair and deceptive practices under the Illinois CFA. All owners
 7 of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles
 8 as a result of Defendants’ deceptive and unfair acts and practices made in the course of
 9 Defendants’ business.

10 1050. As a direct and proximate result of Defendants’ violations of the Illinois CFA,
 11 Plaintiffs and the Illinois State Class have suffered injury-in-fact and/or actual damage.

12 1051. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois State Class seek
 13 monetary relief against Defendants in the amount of actual damages, as well as punitive damages
 14 because Defendants acted with fraud and/or malice and/or was grossly negligent.

15 1052. Plaintiffs also seek an order enjoining Defendants’ unfair and/or deceptive acts or
 16 practices, punitive damages, and attorneys’ fees, and any other just and proper relief available
 17 under 815 ILCS § 505/1 *et seq.*

18 **ILLINOIS COUNT II:**
 19 **Breach of Express Warranty**
 20 **810 Ill. Comp. Stat. §§ 5/2-313 and 5/2A-210**
(On Behalf of the Illinois State Class)

21 1053. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 22 fully set forth herein.

23 1054. This count is brought on behalf of the Illinois State Class against the Volkswagen
 24 and Audi Defendants (collectively for this count, “Defendants”).

25 1055. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 26 vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and “sellers” of motor
 27 vehicles under § 5/2-103(1)(d).
 28

1056. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

1057. The Class Vehicles are and were at all relevant times “goods” within the meaning of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

1058. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1059. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Illinois State Class members regarding the performance and emission controls of their vehicles.

1060. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1061. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1 1062. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 1063. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 1064. As manufacturers of light-duty vehicles, Defendants were required to provide
19 these warranties to purchasers or lessees of Class Vehicles.

20 1065. Defendants' warranties formed a basis of the bargain that was reached when
21 Illinois State Class members purchased or leased Class Vehicles that are equipped with a defeat
22 device and non-compliant emission systems.

23 1066. Despite the existence of warranties, Defendants failed to inform Illinois State
24 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
25 compliance with applicable state and federal emissions laws, and failed to fix the defective
26 emission components free of charge.

1 1067. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 1068. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 1069. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy
8 is insufficient to make Illinois State Class members whole and because Defendants have failed
9 and/or have refused to adequately provide the promised remedies within a reasonable time.

10 1070. Accordingly, recovery by the Illinois State Class members is not restricted to the
11 limited warranty promising to repair and correct Defendants' defect in materials and
12 workmanship, and they seek all remedies as allowed by law.

13 1071. Also, as alleged in more detail herein, at the time Defendants warranted and sold
14 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
15 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. Illinois State Class members were therefore induced
17 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 1072. Moreover, many of the injuries flowing from the Class Vehicles cannot be
19 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
20 and workmanship as many incidental and consequential damages have already been suffered
21 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
22 continued failure to provide such limited remedy within a reasonable time, and any limitation on
23 the Illinois State Class members' remedies would be insufficient to make them whole.

24 1073. Finally, because of Defendants' breach of warranty as set forth herein, Illinois
25 State Class members assert, as additional and/or alternative remedies, the revocation of
26 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
27 currently owned or leased, and for such other incidental and consequential damages as allowed.
28

1074. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

1075. As a direct and proximate result of Defendants' breach of express warranties, Illinois State Class members have been damaged in an amount to be determined at trial.

**ILLINOIS COUNT III:
Breach of Implied Warranty of Merchantability
810 Ill. Comp. Stat. §§ 5/2-314 and 5/2A-212
(On Behalf of the Illinois State Class)**

1076. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1077. This count is brought on behalf of the Illinois State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1078. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and "sellers" of motor vehicles under § 5/2-103(1)(d).

1079. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

1080. The Class Vehicles are and were at all relevant times "goods" within the meaning of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

1081. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 810 Ill. Comp. Stat. §§ 28-2-314 and 28-12-212.

1082. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1 1090. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
7 Indiana DCSA.

8 1091. Defendants intentionally and knowingly misrepresented material facts regarding
9 the Class Vehicles with intent to mislead Plaintiffs and the Indiana State Class.

10 1092. Defendants knew or should have known that their conduct violated the Indiana
11 DCSA.

12 1093. Defendants owed Plaintiffs and the Indiana State Class a duty to disclose the
13 illegality, public health and safety risks, the true nature of the Class Vehicles, because
14 Defendants:

15 A. possessed exclusive knowledge that they were manufacturing, selling, and
16 distributing vehicles throughout the United States that did not comply with regulations;

17 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
18 Class members; and/or

19 C. made incomplete representations about the Class Vehicles generally, and
20 the use of the defeat device in particular, while purposefully withholding material facts from
21 Plaintiffs that contradicted these representations.

22 1094. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
23 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
24 Plaintiffs and the Indiana State Class.

25 1095. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
26 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
27 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
28 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

1 1096. Defendants' violations present a continuing risk to Plaintiffs as well as to the
2 general public. Defendants' unlawful acts and practices complained of herein affect the public
3 interest.

4 1097. Plaintiffs and the Indiana State Class suffered ascertainable loss and actual
5 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
6 of and failure to disclose material information. Plaintiffs and the Indiana State Class members
7 who purchased or leased the Class Vehicles would not have purchased or leased them at all
8 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
9 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
10 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
11 their customers to refrain from unfair and deceptive practices under the Indiana DCSA. All
12 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
13 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
14 Defendants' business.

15 1098. As a direct and proximate result of Defendants' violations of the Indiana DCSA,
16 Plaintiffs and the Indiana State Class have suffered injury-in-fact and/or actual damage.

17 1099. Pursuant to Ind. Code § 24-5-0.5-4, Plaintiffs and the Indiana State Class seek
18 monetary relief against Defendants measured as the greater of (a) actual damages in an amount to
19 be determined at trial and (b) statutory damages in the amount of \$500 for each Plaintiffs and
20 each Indiana State Class member, including treble damages up to \$1,000 for Defendants'
21 willfully deceptive acts.

22 1100. Plaintiffs also seeks punitive damages based on the outrageousness and
23 recklessness of the Defendants' conduct and Defendants' high net worth.

24 1101. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
25 LLC complying with Ind. Code § 24-5-0.5-5(a). Additionally, all Defendants were provided
26 notice of the issues raised in this count and this Complaint by the governmental investigations,
27 the numerous complaints filed against them, and the many individual notice letters sent by
28 consumers within a reasonable amount of time after the allegations of Class Vehicle defects

1 became public. Moreover, Plaintiffs sent a second notice letter pursuant to Ind. Code § 24-5-0.5-
 2 5(a) to all Defendants on October 11, 2017. Because Defendants failed to remedy their unlawful
 3 conduct within the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs
 4 and the Indiana State Class are entitled.

5 **INDIANA COUNT II:**
 6 **Breach of Express Warranty**
 7 **Ind. Code §§ 26-1-3-313 and 26-1-2.1-210**
 8 **(On Behalf of the Indiana State Class)**

9 1102. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 10 fully set forth herein.

11 1103. This count is brought on behalf of the Indiana State Class against the Volkswagen
 12 and Audi Defendants (collectively for this count, “Defendants”).

13 1104. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 14 vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and “sellers” of motor vehicles
 15 under § 26-1-2-103(1)(d).

16 1105. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 17 of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

18 1106. The Class Vehicles are and were at all relevant times “goods” within the meaning
 19 of Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

20 1107. In connection with the purchase or lease of each one of its new vehicles,
 21 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 22 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 23 materials or workmanship.”

24 1108. Defendants also made numerous representations, descriptions, and promises to
 25 Plaintiffs and Indiana State Class members regarding the performance and emission controls of
 26 their vehicles.

27 1109. For example, as shown below, Defendants included in the warranty booklets for
 28 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped

1 so as to conform at the time of sale with all applicable regulations of the United States
2 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

13 1110. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
14 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
15 Warranty.”

16 1111. The EPA requires vehicle manufacturers to provide a Performance Warranty with
17 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
18 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
19 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
20 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
21 emission control components are covered for the first eight years or 80,000 miles (whichever
22 comes first). These major emission control components subject to the longer warranty include the
23 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
24 device or computer.

25 1112. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
26 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
27 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
28 Design and Defect Warranty required by the EPA covers repair of emission control or emission

1 related parts, which fail to function or function improperly because of a defect in materials or
2 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
3 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
4 comes first.

5 1113. As manufacturers of light-duty vehicles, Defendants were required to provide
6 these warranties to purchasers or lessees of Class Vehicles.

7 1114. Defendants' warranties formed a basis of the bargain that was reached when
8 Indiana State Class members purchased or leased Class Vehicles that are equipped with a defeat
9 device and non-compliant emission systems.

10 1115. Despite the existence of warranties, Defendants failed to inform Indiana State
11 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
12 compliance with applicable state and federal emissions laws, and failed to fix the defective
13 emission components free of charge.

14 1116. Defendants breached the express warranty promising to repair and correct
15 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
16 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

17 1117. Affording Defendants a reasonable opportunity to cure their breach of written
18 warranties would be unnecessary and futile here.

19 1118. Furthermore, the limited warranty promising to repair and correct Defendants'
20 defect in materials and workmanship fails in its essential purpose because the contractual remedy
21 is insufficient to make Indiana State Class members whole and because Defendants have failed
22 and/or have refused to adequately provide the promised remedies within a reasonable time.

23 1119. Accordingly, recovery by the Indiana State Class members is not restricted to the
24 limited warranty promising to repair and correct Defendants' defect in materials and
25 workmanship, and they seek all remedies as allowed by law.

26 1120. Also, as alleged in more detail herein, at the time Defendants warranted and sold
27 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
28 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed

1 material facts regarding the Class Vehicles. Indiana State Class members were therefore induced
2 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 1121. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
5 and workmanship as many incidental and consequential damages have already been suffered
6 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
7 continued failure to provide such limited remedy within a reasonable time, and any limitation on
8 the Indiana State Class members' remedies would be insufficient to make them whole.

9 1122. Finally, because of Defendants' breach of warranty as set forth herein, Indiana
10 State Class members assert, as additional and/or alternative remedies, the revocation of
11 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
12 currently owned or leased, and for such other incidental and consequential damages as allowed.

13 1123. Defendants were provided notice of these issues by numerous complaints filed
14 against them, including the instant Complaint, within a reasonable amount of time.

15 1124. As a direct and proximate result of Defendants' breach of express warranties,
16 Indiana State Class members have been damaged in an amount to be determined at trial.

17 **INDIANA COUNT III:**
18 **Breach of Implied Warranty of Merchantability**
19 **Ind. Code §§ 26-1-3-314 and 26-1-2.1-212**
(On Behalf of the Indiana State Class)

20 1125. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
21 paragraphs as though fully set forth herein.

22 1126. This count is brought on behalf of the Indiana State Class against the Volkswagen
23 and Audi Defendants (collectively for this count, "Defendants").

24 1127. Defendants are and were at all relevant times "merchant[s]" with respect to motor
25 vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and "sellers" of motor vehicles
26 under § 26-1-2-103(1)(d).

27 1128. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
28 of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

1129. The Class Vehicles are and were at all relevant times “goods” within the meaning of Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

1130. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ind. Code §§ 26-1-2-314 and 26-1-2.1-212.

1131. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1132. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1133. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Indiana State Class members have been damaged in an amount to be proven at trial.

**IOWA COUNT I:
Violations of the Private Right of Action For Consumer Frauds Act
Iowa Code § 714h.1, *et seq.*
(On Behalf of the Iowa State Class)**

1134. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1135. This count is brought on behalf of the Iowa State Class against all Defendants.

1136. Defendants are “person[s]” under Iowa Code § 714H.2(7).

1137. Plaintiffs and the Iowa State Class members are “consumers,” as defined by Iowa Code § 14H.2(3), who purchased or leased one or more Class Vehicles.

1138. The Iowa Private Right of Action for Consumer Frauds Act (“Iowa CFA”) prohibits any “practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment,

1 suppression, or omission of a material fact, with the intent that others rely upon the unfair
2 practice, deception, fraud, false pretense, false promise, misrepresentation, concealment,
3 suppression, or omission in connection with the advertisement, sale, or lease of consumer
4 merchandise.” Iowa Code § 714H.3.

5 1139. In the course of its business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
7 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
8 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
9 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
10 testing by way of deliberately induced false readings.

11 1140. Iowa State Class members had no way of discerning that Defendants’
12 representations were false and misleading because Defendants’ defeat device software was
13 extremely sophisticated technology. Plaintiffs and Iowa State Class members did not and could
14 not unravel Defendants’ deception on their own.

15 1141. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
16 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
17 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
18 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
19 a transaction involving Class Vehicles has been supplied in accordance with a previous
20 representation when it has not.

21 1142. The Clean Air Act and EPA regulations require that automobiles limit their
22 emissions output to specified levels. These laws are intended for the protection of public health
23 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
24 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
25 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
26 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
27 Iowa CFA.
28

1 1143. Defendants intentionally and knowingly misrepresented material facts regarding
2 the Class Vehicles with intent to mislead Plaintiffs and the Iowa State Class.

3 1144. Defendants knew or should have known that their conduct violated the Iowa CFA.

4 1145. Defendants owed Plaintiffs and the Iowa State Class a duty to disclose the
5 illegality, public health and safety risks, the true nature of the Class Vehicles, because
6 Defendants:

7 A. possessed exclusive knowledge that they were manufacturing, selling, and
8 distributing vehicles throughout the United States that did not comply with regulations;

9 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
10 Class members; and/or

11 C. made incomplete representations about the Class Vehicles generally, and
12 the use of the defeat device in particular, while purposefully withholding material facts from
13 Plaintiffs that contradicted these representations.

14 1146. Defendants' fraudulent use of the "defeat device" and its concealment of the true
15 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
16 Plaintiffs and the Iowa State Class.

17 1147. Defendants' unfair or deceptive acts or practices were likely to and did in fact
18 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
19 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
20 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

21 1148. Defendants' violations present a continuing risk to Plaintiffs as well as to the
22 general public. Defendants' unlawful acts and practices complained of herein affect the public
23 interest.

24 1149. Plaintiffs and the Iowa State Class suffered ascertainable loss and actual damages
25 as a direct and proximate result of Defendants' misrepresentations and its concealment of and
26 failure to disclose material information. Plaintiffs and the Iowa State Class members who
27 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
28 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to

1 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
 2 their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their
 3 customers to refrain from unfair and deceptive practices under the Iowa CFA. All owners of Class
 4 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a
 5 result of Defendants’ deceptive and unfair acts and practices made in the course of Defendants’
 6 business.

7 1150. As a direct and proximate result of Defendants’ violations of the Iowa CFA,
 8 Plaintiffs and the Iowa State Class have suffered injury-in-fact and/or actual damage.

9 1151. Pursuant to Iowa Code § 714H.5, Plaintiffs seek an order enjoining Defendants’
 10 unfair and/or deceptive acts or practices; actual damages; in addition to an award of actual
 11 damages, statutory damages up to three times the amount of actual damages awarded as a result
 12 of Defendants’ willful and wanton disregard for the rights or safety of others; attorneys’ fees; and
 13 such other equitable relief as the Court deems necessary to protect the public from further
 14 violations of the Iowa CFA.

15 **IOWA COUNT II:**
 16 **Breach of Express Warranty**
 17 **Iowa Code §§ 554.2313 and 554.13210**
(On Behalf of the Iowa State Class)

18 1152. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 19 fully set forth herein.

20 1153. This count is brought on behalf of the Iowa State Class against the Volkswagen
 21 and Audi Defendants (collectively for this count, “Defendants”).

22 1154. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 23 vehicles under Iowa Code §§ 554.2104(1) and 554.13103(3), and “sellers” of motor vehicles
 24 under § 554.2103(1)(d).

25 1155. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 26 of motor vehicles under Iowa Code § 554.13103(1)(p).

27 1156. The Class Vehicles are and were at all relevant times “goods” within the meaning
 28 of Iowa Code §§ 554.2105(1) and 554.13103(1)(h).

1157. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1158. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Iowa State Class members regarding the performance and emission controls of their vehicles.

1159. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1160. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1161. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major

1 emission control components are covered for the first eight years or 80,000 miles (whichever
2 comes first). These major emission control components subject to the longer warranty include the
3 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
4 device or computer.

5 1162. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
6 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
7 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
8 Design and Defect Warranty required by the EPA covers repair of emission control or emission
9 related parts, which fail to function or function improperly because of a defect in materials or
10 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
11 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
12 comes first.

13 1163. As manufacturers of light-duty vehicles, Defendants were required to provide
14 these warranties to purchasers or lessees of Class Vehicles.

15 1164. Defendants' warranties formed a basis of the bargain that was reached when Iowa
16 State Class members purchased or leased Class Vehicles that are equipped with a defeat device
17 and non-compliant emission systems.

18 1165. Despite the existence of warranties, Defendants failed to inform Iowa State Class
19 members that the Class Vehicles were intentionally designed and manufactured to be out of
20 compliance with applicable state and federal emissions laws, and failed to fix the defective
21 emission components free of charge.

22 1166. Defendants breached the express warranty promising to repair and correct
23 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
24 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

25 1167. Affording Defendants a reasonable opportunity to cure their breach of written
26 warranties would be unnecessary and futile here.

27 1168. Furthermore, the limited warranty promising to repair and correct Defendants'
28 defect in materials and workmanship fails in its essential purpose because the contractual remedy

1 is insufficient to make Iowa State Class members whole and because Defendants have failed
2 and/or have refused to adequately provide the promised remedies within a reasonable time.

3 1169. Accordingly, recovery by the Iowa State Class members is not restricted to the
4 limited warranty promising to repair and correct Defendants' defect in materials and
5 workmanship, and they seek all remedies as allowed by law.

6 1170. Also, as alleged in more detail herein, at the time Defendants warranted and sold
7 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
8 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. Iowa State Class members were therefore induced to
10 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 1171. Moreover, many of the injuries flowing from the Class Vehicles cannot be
12 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
13 and workmanship as many incidental and consequential damages have already been suffered
14 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
15 continued failure to provide such limited remedy within a reasonable time, and any limitation on
16 the Iowa State Class members' remedies would be insufficient to make them whole.

17 1172. Finally, because of Defendants' breach of warranty as set forth herein, Iowa State
18 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of
19 the goods and the return to them the purchase or lease price of all Class Vehicles currently owned
20 or leased, and for such other incidental and consequential damages as allowed.

21 1173. Defendants were provided notice of these issues by numerous complaints filed
22 against them, including the instant Complaint, within a reasonable amount of time.

23 1174. As a direct and proximate result of Defendants' breach of express warranties, Iowa
24 State Class members have been damaged in an amount to be determined at trial.

**IOWA COUNT III:
Breach of Implied Warranty of Merchantability
Iowa Code §§ 554.2314 and 554.13212
(On Behalf of the Iowa State Class)**

1175. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1176. This count is brought on behalf of the Iowa State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

1177. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Iowa Code §§ 554.2104(1) and 554.13103(3), and “sellers” of motor vehicles under § 554.2103(1)(d).

1178. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Iowa Code § 554.13103(1)(p).

1179. The Class Vehicles are and were at all relevant times “goods” within the meaning of Iowa Code §§ 554.2105(1) and 554.13103(1)(h).

1180. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Iowa Code §§ 554.2314 and 554.13212.

1181. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1182. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1183. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Iowa State Class members have been damaged in an amount to be proven at trial.

**KANSAS COUNT I:
Violations of the Kansas Consumer Protection Act
Kan. Stat. Ann. § 50-623 *et seq.*
(On Behalf of the Kansas State Class)**

1184. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1185. This count is brought on behalf of the Kansas State Class against all Defendants.

1186. Each Defendant is a “supplier” under the Kansas Consumer Protection Act (“Kansas CPA”), Kan. Stat. Ann. § 50-624(l).

1187. Kansas State Class members are “consumers,” within the meaning of Kan. Stat. Ann. § 50-624(b), who purchased or leased one or more Class Vehicles.

1188. The sale of the Class Vehicles to the Kansas State Class members was a “consumer transaction” within the meaning of Kan. Stat. Ann. § 50-624(c).

1189. The Kansas CPA states “[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction,” Kan. Stat. Ann. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that “(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;” and “(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;” “(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;” and “(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.” The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction.” Kan. Stat. Ann. § 50-627(a).

1190. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of

1 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
2 testing by way of deliberately induced false readings.

3 1191. Kansas State Class members had no way of discerning that Defendants’
4 representations were false and misleading because Defendants’ defeat device software was
5 extremely sophisticated technology. Plaintiffs and Kansas State Class members did not and could
6 not unravel Defendants’ deception on their own.

7 1192. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
8 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
9 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
10 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
11 a transaction involving Class Vehicles has been supplied in accordance with a previous
12 representation when it has not.

13 1193. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
17 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
18 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
19 Kansas CPA.

20 1194. Defendants intentionally and knowingly misrepresented material facts regarding
21 the Class Vehicles with intent to mislead Plaintiffs and the Kansas State Class.

22 1195. Defendants knew or should have known that their conduct violated the Kansas
23 CPA.

24 1196. Defendants owed Plaintiffs and the Kansas State Class a duty to disclose the
25 illegality, public health and safety risks, the true nature of the Class Vehicles, because
26 Defendants:

27 A. possessed exclusive knowledge that they were manufacturing, selling, and
28 distributing vehicles throughout the United States that did not comply with regulations;

1 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles generally, and
4 the use of the defeat device in particular, while purposefully withholding material facts from
5 Plaintiffs that contradicted these representations.

6 1197. Defendants' fraudulent use of the "defeat device" and its concealment of the true
7 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
8 Plaintiffs and the Kansas State Class.

9 1198. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
12 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

13 1199. Defendants' violations present a continuing risk to Plaintiffs as well as to the
14 general public. Defendants' unlawful acts and practices complained of herein affect the public
15 interest.

16 1200. Plaintiffs and the Kansas State Class suffered ascertainable loss and actual
17 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
18 of and failure to disclose material information. Plaintiffs and the Kansas State Class members
19 who purchased or leased the Class Vehicles would not have purchased or leased them at all
20 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
21 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
22 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
23 their customers to refrain from unfair and deceptive practices under the Kansas CPA. All owners
24 of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles
25 as a result of Defendants' deceptive and unfair acts and practices made in the course of
26 Defendants' business.

27 1201. As a direct and proximate result of Defendants' violations of the Kansas CPA,
28 Plaintiffs and the Kansas State Class have suffered injury-in-fact and/or actual damage.

1202. Pursuant to Kan. Stat. Ann. § 50-634, Plaintiffs and the Kansas State Class seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$10,000 for each Plaintiffs and each Kansas State Class member.

1203. Plaintiffs also seeks an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under Kan. Stat. Ann § 50-623, *et seq.*

**KANSAS COUNT II:
Breach of Express Warranty
Kan. Stat. §§ 84-2-313 and 84-2A-210
(On Behalf of the Kansas State Class)**

1204. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1205. This count is brought on behalf of the Kansas State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1206. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and "sellers" of motor vehicles under § 84-2-103(1)(d).

1207. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).

1208. The Class Vehicles are and were at all relevant times "goods" within the meaning of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).

1209. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover "any repair to correct a manufacturers defect in materials or workmanship."

1210. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Kansas State Class members regarding the performance and emission controls of their vehicles.

1211. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1212. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1213. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1214. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles’ emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The

1 Design and Defect Warranty required by the EPA covers repair of emission control or emission
2 related parts, which fail to function or function improperly because of a defect in materials or
3 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
4 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
5 comes first.

6 1215. As manufacturers of light-duty vehicles, Defendants were required to provide
7 these warranties to purchasers or lessees of Class Vehicles.

8 1216. Defendants' warranties formed a basis of the bargain that was reached when
9 Kansas State Class members purchased or leased Class Vehicles that are equipped with a defeat
10 device and non-compliant emission systems.

11 1217. Despite the existence of warranties, Defendants failed to inform Kansas State
12 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
13 compliance with applicable state and federal emissions laws, and failed to fix the defective
14 emission components free of charge.

15 1218. Defendants breached the express warranty promising to repair and correct
16 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
17 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

18 1219. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile here.

20 1220. Furthermore, the limited warranty promising to repair and correct Defendants'
21 defect in materials and workmanship fails in its essential purpose because the contractual remedy
22 is insufficient to make Kansas State Class members whole and because Defendants have failed
23 and/or have refused to adequately provide the promised remedies within a reasonable time.

24 1221. Accordingly, recovery by the Kansas State Class members is not restricted to the
25 limited warranty promising to repair and correct Defendants' defect in materials and
26 workmanship, and they seek all remedies as allowed by law.

27 1222. Also, as alleged in more detail herein, at the time Defendants warranted and sold
28 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did

1 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
 2 material facts regarding the Class Vehicles. Kansas State Class members were therefore induced
 3 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

4 1223. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 5 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
 6 and workmanship as many incidental and consequential damages have already been suffered
 7 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
 8 continued failure to provide such limited remedy within a reasonable time, and any limitation on
 9 the Kansas State Class members' remedies would be insufficient to make them whole.

10 1224. Finally, because of Defendants' breach of warranty as set forth herein, Kansas
 11 State Class members assert, as additional and/or alternative remedies, the revocation of
 12 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 13 currently owned or leased, and for such other incidental and consequential damages as allowed.

14 1225. Defendants were provided notice of these issues by numerous complaints filed
 15 against them, including the instant Complaint, within a reasonable amount of time.

16 1226. As a direct and proximate result of Defendants' breach of express warranties,
 17 Kansas State Class members have been damaged in an amount to be determined at trial.

18 **KANSAS COUNT III:**
 19 **Breach of Implied Warranty of Merchantability**
 20 **Kan. Stat. §§ 84-2-314 and 84-2A-212**
(On Behalf of the Kansas State Class)

21 1227. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 22 paragraphs as though fully set forth herein.

23 1228. This count is brought on behalf of the Kansas State Class against the Volkswagen
 24 and Audi Defendants (collectively for this count, "Defendants").

25 1229. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 26 vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and "sellers" of motor vehicles under
 27 § 84-2-103(1)(d).
 28

1230. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).

1231. The Class Vehicles are and were at all relevant times “goods” within the meaning of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).

1232. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Kan. Stat. §§ 84-2-314 and 84-2A-212.

1233. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1234. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1235. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Kansas State Class members have been damaged in an amount to be proven at trial.

KENTUCKY COUNT I:
Violations of the Kentucky Consumer Protection Act
Ky. Rev. Stat. Ann. § 367.110 *et seq.*
(On Behalf of the Kentucky State Class)

1236. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1237. This count is brought on behalf of the Kentucky State Class against all Defendants.

1238. Defendants, Plaintiffs, and the Kentucky State Class are “persons” within the meaning of the Ky. Rev. Stat. § 367.110(1).

1239. Defendants engaged in “trade” or “commerce” within the meaning of Ky. Rev. Stat. § 367.110(2).

1 1240. The Kentucky Consumer Protection Act (“Kentucky CPA”) makes unlawful
2 “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or
3 commerce” Ky. Rev. Stat. § 367.170(1). Defendants participated in misleading, false, or
4 deceptive acts that violated the Kentucky CPA. By failing to disclose and by actively concealing
5 the “defeat device” and the true cleanliness and performance of the Class Vehicles, by marketing
6 its vehicles as safe, reliable, efficient, and of high quality, and by presenting itself as a reputable
7 manufacturer that valued safety, environmental cleanliness, and efficiency, and stood behind its
8 vehicles after they were sold, Defendants engaged in deceptive business practices prohibited by
9 the Kentucky CPA.

10 1241. In the course of its business, Defendants concealed and suppressed material facts
11 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
12 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
13 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
14 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
15 testing by way of deliberately induced false readings.

16 1242. Kentucky State Class members had no way of discerning that Defendants’
17 representations were false and misleading because Defendants’ defeat device software was
18 extremely sophisticated technology. Plaintiffs and Kentucky State Class members did not and
19 could not unravel Defendants’ deception on their own.

20 1243. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
21 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
22 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
23 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
24 a transaction involving Class Vehicles has been supplied in accordance with a previous
25 representation when it has not.

26 1244. The Clean Air Act and EPA regulations require that automobiles limit their
27 emissions output to specified levels. These laws are intended for the protection of public health
28 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the

1 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
2 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
3 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
4 Kentucky CPA.

5 1245. Defendants intentionally and knowingly misrepresented material facts regarding
6 the Class Vehicles with intent to mislead Plaintiffs and the Kentucky State Class.

7 1246. Defendants knew or should have known that their conduct violated the Kentucky
8 CPA.

9 1247. Defendants owed Plaintiffs and the Kentucky State Class a duty to disclose the
10 illegality, public health and safety risks, the true nature of the Class Vehicles, because
11 Defendants:

12 A. possessed exclusive knowledge that they were manufacturing, selling, and
13 distributing vehicles throughout the United States that did not comply with regulations;

14 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
15 Class members; and/or

16 C. made incomplete representations about the Class Vehicles generally, and
17 the use of the defeat device in particular, while purposefully withholding material facts from
18 Plaintiffs that contradicted these representations.

19 1248. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
20 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
21 Plaintiffs and the Kentucky State Class.

22 1249. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
24 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
25 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

26 1250. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
27 general public. Defendants’ unlawful acts and practices complained of herein affect the public
28 interest.

1251. Plaintiffs and the Kentucky State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the Kentucky State Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Kentucky CPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.

1252. As a direct and proximate result of Defendants' violations of the Kentucky CPA, Plaintiffs and the Kentucky State Class have suffered injury-in-fact and/or actual damage.

1253. Pursuant to Ky. Rev. Stat. Ann. § 367.220, Plaintiffs and the Kentucky State Class seek to recover actual damages in an amount to be determined at trial; an order enjoining Defendants' unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under Ky. Rev. Stat. Ann. § 367.220.

**KENTUCKY COUNT II:
Breach of Express Warranty
Ky. Rev. Stat. §§ 335.2-313 and 355.2A-210
(On Behalf of the Kentucky State Class)**

1254. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1255. This count is brought on behalf of the Kentucky State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1256. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ky. Rev. Stat. §§ 355.2-104(1) and 355.2A-103(3), and "sellers" of motor vehicles under § 355.2-103(1)(d).

1257. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Ky. Rev. Stat. § 355.2A-103(1)(p).

1258. The Class Vehicles are and were at all relevant times “goods” within the meaning of Ky. Rev. Stat. §§ 355.2-105(1) and 355.2A-103(1)(h).

1259. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1260. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Kentucky State Class members regarding the performance and emission controls of their vehicles.

1261. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1262. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1 1263. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 1264. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 1265. As manufacturers of light-duty vehicles, Defendants were required to provide
19 these warranties to purchasers or lessees of Class Vehicles.

20 1266. Defendants' warranties formed a basis of the bargain that was reached when
21 Kentucky State Class members purchased or leased Class Vehicles that are equipped with a
22 defeat device and non-compliant emission systems.

23 1267. Despite the existence of warranties, Defendants failed to inform Kentucky State
24 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
25 compliance with applicable state and federal emissions laws, and failed to fix the defective
26 emission components free of charge.

1 1268. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 1269. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 1270. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy
8 is insufficient to make Kentucky State Class members whole and because Defendants have failed
9 and/or have refused to adequately provide the promised remedies within a reasonable time.

10 1271. Accordingly, recovery by the Kentucky State Class members is not restricted to
11 the limited warranty promising to repair and correct Defendants' defect in materials and
12 workmanship, and they seek all remedies as allowed by law.

13 1272. Also, as alleged in more detail herein, at the time Defendants warranted and sold
14 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
15 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. Kentucky State Class members were therefore
17 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 1273. Moreover, many of the injuries flowing from the Class Vehicles cannot be
19 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
20 and workmanship as many incidental and consequential damages have already been suffered
21 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
22 continued failure to provide such limited remedy within a reasonable time, and any limitation on
23 the Kentucky State Class members' remedies would be insufficient to make them whole.

24 1274. Finally, because of Defendants' breach of warranty as set forth herein, Kentucky
25 State Class members assert, as additional and/or alternative remedies, the revocation of
26 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
27 currently owned or leased, and for such other incidental and consequential damages as allowed.
28

1275. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

1276. As a direct and proximate result of Defendants' breach of express warranties, Kentucky State Class members have been damaged in an amount to be determined at trial.

**KENTUCKY COUNT III:
Breach of Implied Warranty of Merchantability
Ky. Rev. Stat. §§ 335.2-314 and 355.2A-212
(On Behalf of the Kentucky State Class)**

1277. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1278. This count is brought on behalf of the Kentucky State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1279. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ky. Rev. Stat. §§ 355.2-104(1) and 355.2A-103(3), and "sellers" of motor vehicles under § 355.2-103(1)(d).

1280. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Ky. Rev. Stat. § 355.2A-103(1)(p).

1281. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ky. Rev. Stat. §§ 355.2-105(1) and 355.2A-103(1)(h).

1282. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ky. Rev. Stat. §§ 335.2-314 and 355.2A-212.

1283. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1284. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1285. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Kentucky State Class members have been damaged in an amount to be proven at trial.

**LOUISIANA COUNT I:
Violations of the Louisiana Unfair Trade Practices and Consumer Protection Law
La. Stat. Ann. § 51:1401 *et seq.*
(On Behalf of the Louisiana State Class)**

1286. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1287. This count is brought on behalf of the Louisiana State Class against all Defendants.

1288. Defendants, Plaintiffs, and the Louisiana State Class are "persons" within the meaning of the La. Rev. Stat. § 51:1402(8)

1289. Plaintiffs and the Louisiana State Class are "consumers" within the meaning of La. Rev. Stat. § 51:1402(1).

1290. Defendants engaged in "trade" or "commerce" within the meaning of La. Rev. Stat. § 51:1402(10).

1291. The Louisiana Unfair Trade Practices and Consumer Protection Law ("Louisiana CPL") makes unlawful "deceptive acts or practices in the conduct of any trade or commerce." La. Rev. Stat. § 51:1405(A). Defendants participated in misleading, false, or deceptive acts that violated the Louisiana CPL.

1292. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of

1 noxious CO2. The result was what Defendants intended—the Class Vehicles passed emissions
2 testing by way of deliberately induced false readings.

3 1293. Louisiana State Class members had no way of discerning that Defendants’
4 representations were false and misleading because Defendants’ defeat device software was
5 extremely sophisticated technology. Plaintiffs and Louisiana State Class members did not and
6 could not unravel Defendants’ deception on their own.

7 1294. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
8 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
9 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
10 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
11 a transaction involving Class Vehicles has been supplied in accordance with a previous
12 representation when it has not.

13 1295. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
17 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
18 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
19 Louisiana CPL.

20 1296. Defendants intentionally and knowingly misrepresented material facts regarding
21 the Class Vehicles with intent to mislead Plaintiffs and the Louisiana State Class.

22 1297. Defendants knew or should have known that their conduct violated the Louisiana
23 CPL.

24 1298. Defendants owed Plaintiffs and the Louisiana State Class a duty to disclose the
25 illegality, public health and safety risks, the true nature of the Class Vehicles, because
26 Defendants:

27 A. possessed exclusive knowledge that they were manufacturing, selling, and
28 distributing vehicles throughout the United States that did not comply with regulations;

1 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles generally, and
4 the use of the defeat device in particular, while purposefully withholding material facts from
5 Plaintiffs that contradicted these representations.

6 1299. Defendants' fraudulent use of the "defeat device" and its concealment of the true
7 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
8 Plaintiffs and the Louisiana State Class.

9 1300. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
12 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

13 1301. Defendants' violations present a continuing risk to Plaintiffs as well as to the
14 general public. Defendants' unlawful acts and practices complained of herein affect the public
15 interest.

16 1302. Plaintiffs and the Louisiana State Class suffered ascertainable loss and actual
17 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
18 of and failure to disclose material information. Plaintiffs and the Louisiana State Class members
19 who purchased or leased the Class Vehicles would not have purchased or leased them at all
20 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
21 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
22 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
23 their customers to refrain from unfair and deceptive practices under the Louisiana CPL. All
24 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
25 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
26 Defendants' business.

27 1303. As a direct and proximate result of Defendants' violations of the Louisiana CPL,
28 Plaintiffs and the Louisiana State Class have suffered injury-in-fact and/or actual damage.

1304. Pursuant to La. Rev. Stat. § 51:1409, Plaintiffs and the Louisiana State Class seek to recover actual damages in an amount to be determined at trial; treble damages for Defendants' knowing violations of the Louisiana CPL; an order enjoining Defendants' unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under La. Rev. Stat. § 51:1409.

LOUISIANA COUNT II:
Breach of Implied Warranty of Merchantability/Warranty Against Redhibitory Defects
La. Civ. Code Art. 2520, 2524
(On Behalf of the Louisiana State Class)

1305. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.

1306. This count is brought on behalf of the Louisiana State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1307. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1308. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with defeat devices and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1309. Defendants were provided notice of these issues by the investigations of the EPA and individual state regulators, and by numerous complaints filed against it including the instant complaint, before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1310. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the other Louisiana State Class members have been damaged in an amount to be proven at trial.

MAINE COUNT I:
Violations of the Maine Unfair Trade Practices Act
Me. Rev. Stat. Ann. Tit. 5, § 205-A *et seq.*
(On Behalf of the Maine State Class)

1311. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1312. This count is brought on behalf of the Maine State Class against all Defendants.

1313. Defendants, Plaintiffs, and the Maine State Class are “persons” within the meaning of Me. Rev. Stat. Ann. Tit. 5, § 206(2).

1314. Defendants engaged in “trade” or “commerce” within the meaning of Me. Rev. Stat. Ann. Tit. 5, § 206(3).

1315. The Maine Unfair Trade Practices Act (“Maine UTPA”) makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce....” Me. Rev. Stat. Ann. Tit. 5 § 207.

1316. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

1317. Maine State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and Maine State Class members did not and could not unravel Defendants’ deception on their own.

1318. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of

1 a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 1319. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
9 Maine UTPA.

10 1320. Defendants intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Maine State Class.

12 1321. Defendants knew or should have known that their conduct violated the Maine
13 UTPA.

14 1322. Defendants owed Plaintiffs and the Maine State Class a duty to disclose the
15 illegality, public health and safety risks, the true nature of the Class Vehicles, because
16 Defendants:

17 A. possessed exclusive knowledge that they were manufacturing, selling, and
18 distributing vehicles throughout the United States that did not comply with regulations;

19 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
20 Class members; and/or

21 C. made incomplete representations about the Class Vehicles generally, and
22 the use of the defeat device in particular, while purposefully withholding material facts from
23 Plaintiffs that contradicted these representations.

24 1323. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
25 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
26 Plaintiffs and the Maine State Class.

27 1324. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental

1 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
2 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

3 1325. Defendants' violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants' unlawful acts and practices complained of herein affect the public
5 interest.

6 1326. Plaintiffs and the Maine State Class suffered ascertainable loss and actual damages
7 as a direct and proximate result of Defendants' misrepresentations and its concealment of and
8 failure to disclose material information. Plaintiffs and the Maine State Class members who
9 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
10 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
11 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
12 their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their
13 customers to refrain from unfair and deceptive practices under the Maine UTPA. All owners of
14 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
15 a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants'
16 business.

17 1327. As a direct and proximate result of Defendants' violations of the Maine UTPA,
18 Plaintiffs and the Maine State Class have suffered injury-in-fact and/or actual damage.

19 1328. Pursuant to Me. Rev. Stat. Ann. Tit. 5 § 213, Plaintiffs and the Maine State Class
20 seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive
21 damages, and attorneys' fees, costs, and any other just and proper relief available under the Maine
22 UTPA.

23 1329. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
24 LLC complying with Me. Rev. Stat. Ann. Title 5, § 50-634(g). Additionally, all Defendants were
25 provided notice of the issues raised in this count and this Complaint by the governmental
26 investigations, the numerous complaints filed against them, and the many individual notice letters
27 sent by consumers within a reasonable amount of time after the allegations of Class Vehicle
28 defects became public. Moreover, Plaintiffs sent a second notice letter pursuant to Me. Rev. Stat.

Ann. Title 5, § 50-634(g) to all Defendants on October 11, 2017. Because Defendants failed to remedy their unlawful conduct within the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Maine State Class are entitled.

**MAINE COUNT II:
Breach of Express Warranty
Me. Rev. Stat. Tit. 11 §§ 2-313 and 2-1210
(On Behalf of the Maine State Class)**

1330. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1331. This count is brought on behalf of the Maine State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

1332. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Me. Rev. Stat. Ann. Tit. 11, §§ 2-104(1), and 2-1103(3), and is a “seller” of motor vehicles under § 2-103(1)(d).

1333. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Me. Rev. Stat. Ann. Tit. 11, § 2-1103(1)(p).

1334. The Class Vehicles are and were at all relevant times “goods” within the meaning of Me. Rev. Stat. Ann. Tit. 11, §§ 2-105(1), and 2-1103(1)(h).

1335. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1336. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Maine State Class members regarding the performance and emission controls of their vehicles.

1337. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1338. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

1339. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1340. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1341. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 1342. Defendants' warranties formed a basis of the bargain that was reached when
6 Maine State Class members purchased or leased Class Vehicles that are equipped with a defeat
7 device and non-compliant emission systems.

8 1343. Despite the existence of warranties, Defendants failed to inform Maine State Class
9 members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 1344. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1345. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1346. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Maine State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 1347. Accordingly, recovery by the Maine State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 1348. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Maine State Class members were therefore induced to
28 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1349. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Maine State Class members' remedies would be insufficient to make them whole.

1350. Finally, because of Defendants' breach of warranty as set forth herein, Maine State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

1351. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

1352. As a direct and proximate result of Defendants' breach of express warranties, Maine State Class members have been damaged in an amount to be determined at trial.

**MAINE COUNT III:
Breach of Implied Warranty of Merchantability
Me. Rev. Stat. Tit. 11 §§ 2-314 and 2-1212
(On Behalf of the Maine State Class)**

1353. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1354. This count is brought on behalf of the Maine State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1355. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Me. Rev. Stat. Ann. Tit. 11, §§ 2-104(1), and 2-1103(3), and is a "seller" of motor vehicles under § 2-103(1)(d).

1356. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Me. Rev. Stat. Ann. Tit. 11, § 2-1103(1)(p).

1357. The Class Vehicles are and were at all relevant times "goods" within the meaning of Me. Rev. Stat. Ann. Tit. 11, §§ 2-105(1), and 2-1103(1)(h).

1358. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Me. Rev. Stat. Ann. Tit. 11, §§ 2-314, and 2-1212.

1359. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1360. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1361. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Maine State Class members have been damaged in an amount to be proven at trial.

**MARYLAND COUNT I:
Violations of the Maryland Consumer Protection Act
Md. Code Com. Law § 13-101 *et seq.*
(On Behalf of the Maryland State Class)**

1362. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1363. Plaintiff Michael Gray (for the purpose of this count, "Plaintiff") brings this count on behalf of himself and the Maryland State Class against all Defendants.

1364. Defendants, Plaintiff, and the Maryland State Class are "persons" within the meaning of Md. Code Com. Law § 13-101(h).

1365. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md. Code Com. Law § 13-303. Defendants participated in misleading, false, or deceptive acts that violated the Maryland CPA.

1 1366. In the course of its business, Defendants concealed and suppressed material facts
2 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
3 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
4 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
5 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
6 testing by way of deliberately induced false readings.

7 1367. Maryland State Class members had no way of discerning that Defendants’
8 representations were false and misleading because Defendants’ defeat device software was
9 extremely sophisticated technology. Plaintiff and Maryland State Class members did not and
10 could not unravel Defendants’ deception on their own.

11 1368. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
12 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
13 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
14 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
15 a transaction involving Class Vehicles has been supplied in accordance with a previous
16 representation when it has not.

17 1369. The Clean Air Act and EPA regulations require that automobiles limit their
18 emissions output to specified levels. These laws are intended for the protection of public health
19 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
20 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
21 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
22 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
23 Maryland CPA.

24 1370. Defendants intentionally and knowingly misrepresented material facts regarding
25 the Class Vehicles with intent to mislead Plaintiff and the Maryland State Class.

26 1371. Defendants knew or should have known that their conduct violated the Maryland
27 CPA.
28

1 1372. Defendants owed Plaintiff and the Maryland State Class a duty to disclose the
2 illegality, public health and safety risks, the true nature of the Class Vehicles, because
3 Defendants:

4 A. possessed exclusive knowledge that they were manufacturing, selling, and
5 distributing vehicles throughout the United States that did not comply with regulations;

6 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
7 Class members; and/or

8 C. made incomplete representations about the Class Vehicles generally, and
9 the use of the defeat device in particular, while purposefully withholding material facts from
10 Plaintiff and/or Class members that contradicted these representations.

11 1373. Defendants' fraudulent use of the "defeat device" and its concealment of the true
12 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
13 Plaintiff and the Maryland State Class.

14 1374. Defendants' unfair or deceptive acts or practices were likely to and did in fact
15 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
16 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
17 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

18 1375. Defendants' violations present a continuing risk to Plaintiff, the Maryland State
19 Class, as well as to the general public. Defendants' unlawful acts and practices complained of
20 herein affect the public interest.

21 1376. Plaintiff and the Maryland State Class suffered ascertainable loss and actual
22 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
23 of and failure to disclose material information. Plaintiff and the Maryland State Class members
24 who purchased or leased the Class Vehicles would not have purchased or leased them at all
25 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
26 legal to sell—would have paid significantly less for them. Plaintiff and the Maryland State Class
27 also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had
28 an ongoing duty to all their customers to refrain from unfair and deceptive practices under the

1 Maryland CPA. All owners of Class Vehicles suffered ascertainable loss in the form of the
 2 diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and
 3 practices made in the course of Defendants' business.

4 1377. As a direct and proximate result of Defendants' violations of the Maryland CPA,
 5 Plaintiff and the Maryland State Class have suffered injury-in-fact and/or actual damage.

6 1378. Pursuant to Md. Code Com. Law § 13-408, Plaintiff and the Maryland State Class
 7 seek actual damages, attorneys' fees, and any other just and proper relief available under the
 8 Maryland CPA.

9 **MARYLAND COUNT II:**
 10 **Maryland Lemon Law**
 11 **Md. Code Com. Law § 14-1501 *et seq.***
 12 **(On Behalf of the Maryland State Class)**

13 1379. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
 14 set forth.

15 1380. Plaintiff Michael Gray (for the purpose of this count, "Plaintiff") brings this count
 16 on behalf of himself and the Maryland State Class against the Volkswagen and Audi Defendants
 17 (collectively for this count, "Defendants").

18 1381. Plaintiff and the Maryland State Class own or lease "motor vehicles" within the
 19 meaning of Md. Code, Com. Law § 14-1501(f), because these vehicles were registered in the state
 20 and fall within the categories of vehicles manufactured, assembled, or distributed by Defendants.
 21 These vehicles are not auto homes.

22 1382. Defendants are "manufacturer[s]" of the Class Vehicles within the meaning of Md.
 23 Code, Com. Law § 14-1501(d).

24 1383. Plaintiff and the Maryland State Class are "consumers" within the meaning of Md.
 25 Code Com. Law § 14-1501(b) because they: purchased the Class Vehicles, were transferred the
 26 Class Vehicles during the warranty period, or are otherwise entitled to the attendant terms of
 27 warranty.

28 1384. The Class Vehicles did not conform to their "warranties" under Md. Code Com.
 Law § 14-1501(g) during the warranty period because they contained a "defeat device" designed

1 to circumvent state and federal emissions standards. These devices did in fact circumvent
2 emissions standards and substantially impaired the use and market value of their motor vehicles.

3 1385. Defendants had actual knowledge of the conformities during the “warranty period”
4 within the meaning of Md. Code, Com. Law § 14-1501(e). But the nonconformities continued to
5 exist throughout this term, as they have not been fixed. Plaintiffs and Maryland State Class
6 members are excused from notifying Defendants of the nonconformities because it was already
7 fully aware of the problem—as it intentionally created it—and any repair attempt is futile.

8 1386. Defendants have had a reasonable opportunity to cure the nonconformities during
9 the warranty period because of its actual knowledge of, creation of, and attempt to conceal the
10 nonconformities, but has not done so as required under Md. Code, Com. Law § 14-1502.

11 1387. Plaintiff and the Maryland State Class demand a full refund of the purchase price,
12 including all license fees, registration fees, and any similar governmental charges. Md. Code
13 Com. Law § 14-1502(c). Once payment has been tendered, the Maryland State Class members
14 will return their vehicles.

15 **MARYLAND COUNT III:**
16 **Breach of Express Warranty**
17 **Md. Code Com. Law §§ 2-313 and 2a-210**
(On Behalf of the Maryland State Class)

18 1388. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
19 fully set forth herein.

20 1389. Plaintiff Michael Gray (for the purpose of this count, “Plaintiff”) brings this count
21 on behalf of himself and the Maryland State Class against the Volkswagen and Audi Defendants
22 (collectively for this count, “Defendants”).

23 1390. Defendants are and were at all relevant times “merchant[s]” with respect to motor
24 vehicles under Md. Code Com. Law § 2-104(1) and “sellers” of motor vehicles under § 2-
25 103(1)(d).

26 1391. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
27 of motor vehicles under Md. Code Com. Law § 2A-103(1)(p).
28

1392. The Class Vehicles are and were at all relevant times “goods” within the meaning of Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).

1393. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1394. Defendants also made numerous representations, descriptions, and promises to Plaintiff and Maryland State Class members regarding the performance and emission controls of their vehicles.

1395. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1396. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1397. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty

1 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
2 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
3 emission control components are covered for the first eight years or 80,000 miles (whichever
4 comes first). These major emission control components subject to the longer warranty include the
5 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
6 device or computer.

7 1398. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
8 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
9 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
10 Design and Defect Warranty required by the EPA covers repair of emission control or emission
11 related parts, which fail to function or function improperly because of a defect in materials or
12 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
13 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
14 comes first.

15 1399. As manufacturers of light-duty vehicles, Defendants were required to provide
16 these warranties to purchasers or lessees of Class Vehicles.

17 1400. Defendants' warranties formed a basis of the bargain that was reached when
18 Maryland State Class members purchased or leased Class Vehicles that are equipped with a
19 defeat device and non-compliant emission systems.

20 1401. Despite the existence of warranties, Defendants failed to inform Maryland State
21 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
22 compliance with applicable state and federal emissions laws, and failed to fix the defective
23 emission components free of charge.

24 1402. Defendants breached the express warranty promising to repair and correct
25 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
26 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

27 1403. Affording Defendants a reasonable opportunity to cure their breach of written
28 warranties would be unnecessary and futile here.

1 1404. Furthermore, the limited warranty promising to repair and correct Defendants’
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy
3 is insufficient to make Maryland State Class members whole and because Defendants have failed
4 and/or have refused to adequately provide the promised remedies within a reasonable time.

5 1405. Accordingly, recovery by the Maryland State Class members is not restricted to
6 the limited warranty promising to repair and correct Defendants’ defect in materials and
7 workmanship, and they seek all remedies as allowed by law.

8 1406. Also, as alleged in more detail herein, at the time Defendants warranted and sold
9 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
10 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
11 material facts regarding the Class Vehicles. Maryland State Class members were therefore
12 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

13 1407. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of repairing and correcting Defendants’ defect in materials
15 and workmanship as many incidental and consequential damages have already been suffered
16 because of Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or
17 continued failure to provide such limited remedy within a reasonable time, and any limitation on
18 the Maryland State Class members’ remedies would be insufficient to make them whole.

19 1408. Finally, because of Defendants’ breach of warranty as set forth herein, Maryland
20 State Class members assert, as additional and/or alternative remedies, the revocation of
21 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
22 currently owned or leased, and for such other incidental and consequential damages as allowed.

23 1409. Defendants were provided notice of these issues by numerous complaints filed
24 against them, including the instant Complaint, within a reasonable amount of time.

25 1410. As a direct and proximate result of Defendants’ breach of express warranties,
26 Maryland State Class members have been damaged in an amount to be determined at trial.

**MARYLAND COUNT IV:
Breach of Implied Warranty of Merchantability
Md. Code Com. Law §§ 2-314 and 2a-212
(On Behalf of the Maryland State Class)**

1411. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1412. Plaintiff Michael Gray (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the Maryland State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

1413. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Md. Code Com. Law § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).

1414. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Md. Code Com. Law § 2A-103(1)(p).

1415. The Class Vehicles are and were at all relevant times “goods” within the meaning of Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).

1416. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Md. Code Com. Law §§ 2-314, and 2a-212.

1417. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1418. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1419. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Maryland State Class members have been damaged in an amount to be proven at trial.

**MASSACHUSETTS COUNT I:
Deceptive Acts or Practices Prohibited by Massachusetts Law
Mass. Gen. Laws Ch. 93a, § 1, *et seq.*
(On Behalf of the Massachusetts State Class)**

1420. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1421. Plaintiff Paul Sherry (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the Massachusetts State Class against all Defendants.

1422. Defendants, Plaintiff, and the Massachusetts State Class are “persons” within the meaning of Mass. Gen. Laws ch. 93A, § 1(a).

1423. Defendants engaged in “trade” or “commerce” within the meaning of Mass. Gen. Laws ch. 93A, § 1(b).

1424. Massachusetts law (the “Massachusetts Act”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” Mass. Gen. Laws ch. 93A, § 2. Defendants participated in misleading, false, or deceptive acts that violated the Massachusetts Act.

1425. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

1426. Massachusetts State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiff and Massachusetts State Class members did not and could not unravel Defendants’ deception on their own.

1 1427. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
5 a transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 1428. The Clean Air Act and EPA regulations require that automobiles limit their
8 emissions output to specified levels. These laws are intended for the protection of public health
9 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
10 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
11 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
12 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
13 Massachusetts Act.

14 1429. Defendants intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiff and the Massachusetts State Class.

16 1430. Defendants knew or should have known that their conduct violated the
17 Massachusetts Act.

18 1431. Defendants owed Plaintiff and the Massachusetts State Class a duty to disclose the
19 illegality, public health and safety risks, the true nature of the Class Vehicles, because
20 Defendants:

21 A. possessed exclusive knowledge that they were manufacturing, selling, and
22 distributing vehicles throughout the United States that did not comply with regulations;

23 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
24 Class members; and/or

25 C. made incomplete representations about the Class Vehicles generally, and
26 the use of the defeat device in particular, while purposefully withholding material facts from
27 Plaintiff and/or Class members that contradicted these representations.
28

1 1432. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
3 Plaintiff and the Massachusetts State Class.

4 1433. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
6 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
7 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

8 1434. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
9 general public. Defendants’ unlawful acts and practices complained of herein affect the public
10 interest.

11 1435. Plaintiff and the Massachusetts State Class suffered ascertainable loss and actual
12 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
13 of and failure to disclose material information. Plaintiff and the Massachusetts State Class
14 members who purchased or leased the Class Vehicles would not have purchased or leased them at
15 all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles
16 rendered legal to sell—would have paid significantly less for them. Plaintiff and the
17 Massachusetts State Class also suffered diminished value of vehicles, as well as lost or
18 diminished use. Defendants had an ongoing duty to all their customers to refrain from unfair and
19 deceptive practices under the Massachusetts Act. All owners of Class Vehicles suffered
20 ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants’
21 deceptive and unfair acts and practices made in the course of Defendants’ business.

22 1436. As a direct and proximate result of Defendants’ violations of the Massachusetts
23 Act, Plaintiff and the Massachusetts State Class have suffered injury-in-fact and/or actual
24 damage.

25 1437. Pursuant to Mass. Gen. Laws ch. 93A, § 9, Plaintiff and the Massachusetts State
26 Class seek monetary relief against Defendants measured as the greater of (a) actual damages in an
27 amount to be determined at trial and (b) statutory damages in the amount of \$25 for Plaintiff and
28 each Massachusetts State Class member. Because Defendants’ conduct was committed willfully

1 and knowingly, Plaintiff and each Massachusetts State Class member are entitled to recover, up to
2 three times actual damages, but no less than two times actual damages.

3 1438. Plaintiff and the Massachusetts State Class also seek an order enjoining
4 Defendants' unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees,
5 costs, and any other just and proper relief available under the Massachusetts Act.

6 1439. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
7 LLC complying with Mass. Gen. Laws ch. 93A, § 9(3). Additionally, all Defendants were
8 provided notice of the issues raised in this count and this Complaint by the governmental
9 investigations, the numerous complaints filed against them, and the many individual notice letters
10 sent by consumers within a reasonable amount of time after the allegations of Class Vehicle
11 defects became public. Moreover, Plaintiffs sent a second notice letter pursuant to Mass. Gen.
12 Laws ch. 93A, § 9(3) to all Defendants on October 11, 2017. Because Defendants failed to
13 remedy their unlawful conduct within the requisite time period, Plaintiffs seek all damages and
14 relief to which Plaintiff and the Massachusetts State Class are entitled.

15 1440. As a result of Defendants' conduct, the amount of its unjust enrichment should be
16 disgorged, in an amount according to proof.

17 **MASSACHUSETTS COUNT II:**
18 **Massachusetts Lemon Law**
19 **Mass. Gen. Laws Ch. 90, § 7N1/2(1)**
(On Behalf of the Massachusetts State Class)

20 1441. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 1442. Plaintiff Paul Sherry (for the purpose of this count, "Plaintiff") brings this count on
23 behalf of himself and the Massachusetts State Class against the Volkswagen and Audi Defendants
24 (collectively for this count, "Defendants").

25 1443. Plaintiff and the Massachusetts State Class own or lease "motor vehicles" within
26 the meaning of Mass. Gen. Laws Ch. 90, § 7N1/2(1), because these vehicles were constructed or
27 designed for propulsion by power and were sold, leased, or replaced by Defendants. These
28

1 vehicles are not: (1) auto homes, (2) vehicles built primarily for off-road use, and (3) used
2 primarily for business purposes.

3 1444. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
4 Mass. Gen. Laws Ch. 90, § 7N1/2(1).

5 1445. Plaintiff and the Massachusetts State Class are “consumers” within the meaning of
6 Mass. Gen. Laws Ch. 90, § 7N1/2(1) because they bought or leased the Class Vehicles or are
7 otherwise entitled to the attendant terms of warranty.

8 1446. The Class Vehicles did not conform to their express and implied warranties
9 because they contained a “defeat device” designed to circumvent state and federal emissions
10 standards. These devices did in fact circumvent emissions standards and substantially impaired
11 the use, market value, and safety of their motor vehicles.

12 1447. Defendants had actual knowledge of the conformities during the “term of
13 protection” within the meaning of Mass. Gen. Laws Ch. 90, §§ 7N1/2(1)–7N1/2(2). But the
14 nonconformities continued to exist throughout this term, as they have not been fixed. Plaintiff and
15 Massachusetts State Class members are excused from notifying Defendants of the
16 nonconformities because it was already fully aware of the problem—as it intentionally created
17 it—and any repair attempt is futile.

18 1448. Defendants have had a reasonable opportunity to cure the nonconformities because
19 of its actual knowledge of, creation of, and attempt to conceal the nonconformities, but has not
20 done so as required under Mass. Gen. Laws Ch. 90, § 7N1/2(3).

21 1449. For vehicles purchased, Plaintiff and the Massachusetts State Class demand a full
22 refund of the contract price. For vehicles leased, Plaintiff and the Massachusetts State Class
23 demand a full refund of all payments made under the lease agreement. Plaintiff and the
24 Massachusetts State Class exercise their “unqualified right” to reject an offer of replacement and
25 will retain their vehicles until payment is tendered under Mass. Gen. Laws Ch. 90, § 7N1/2(3).
26
27
28

**MASSACHUSETTS COUNT III:
Breach of Express Warranty
Mass. Gen. Laws c. 106 §§ 2-313 and 2A-210
(On Behalf of the Massachusetts State Class)**

1450. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1451. Plaintiff Paul Sherry (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the Massachusetts State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

1452. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under M.G.L. c. 106 § 2-104(1) and is a “seller” of motor vehicles under § 2-103(1)(d).

1453. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under M.G.L. c. 106 § 2A-103(1)(p).

1454. The Class Vehicles are and were at all relevant times “goods” within the meaning of M.G.L. c. 106 §§ 2-105(1) and 2A-103(1)(h).

1455. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1456. Defendants also made numerous representations, descriptions, and promises to Plaintiff and Massachusetts State Class members regarding the performance and emission controls of their vehicles.

1457. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1458. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

1459. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1460. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1461. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 1462. Defendants' warranties formed a basis of the bargain that was reached when
6 Massachusetts State Class members purchased or leased Class Vehicles that are equipped with a
7 defeat device and non-compliant emission systems.

8 1463. Despite the existence of warranties, Defendants failed to inform Massachusetts
9 State Class members that the Class Vehicles were intentionally designed and manufactured to be
10 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 1464. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1465. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1466. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Massachusetts State Class members whole and because Defendants have
20 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

21 1467. Accordingly, recovery by the Massachusetts State Class members is not restricted
22 to the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 1468. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Massachusetts State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1469. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Massachusetts State Class members' remedies would be insufficient to make them whole.

1470. Finally, because of Defendants' breach of warranty as set forth herein, Massachusetts State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

1471. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

1472. As a direct and proximate result of Defendants' breach of express warranties, Massachusetts State Class members have been damaged in an amount to be determined at trial.

**MASSACHUSETTS COUNT IV:
Breach of Implied Warranty of Merchantability
Mass. Gen. Laws c. 106 §§ 2-314 and 2A-212
(On Behalf of the Massachusetts State Class)**

1473. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1474. Plaintiff Paul Sherry (for the purpose of this count, "Plaintiff") brings this count on behalf of himself and the Massachusetts State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1475. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under M.G.L. c. 106 § 2-104(1) and is a "seller" of motor vehicles under § 2-103(1)(d).

1476. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under M.G.L. c. 106 § 2A-103(1)(p).

1477. The Class Vehicles are and were at all relevant times “goods” within the meaning of M.G.L. c. 106 §§ 2-105(1) and 2A-103(1)(h).

1478. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to M.G.L. c. 106 §§ 2-314 and 2A-212.

1479. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1480. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1481. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Massachusetts State Class members have been damaged in an amount to be proven at trial.

MICHIGAN COUNT I:
Violations of the Michigan Consumer Protection Act
Mich. Comp. Laws § 445.903 *et seq.*
(On Behalf of the Michigan State Class)

1482. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1483. Plaintiff Ira Margolis (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the Michigan State Class against all Defendants.

1484. Plaintiff and the Michigan State Class members are “person[s]” within the meaning of the Mich. Comp. Laws § 445.902(1)(d).

1485. Defendants are “person[s]” engaged in “trade or commerce” within the meaning of the Mich. Comp. Laws § 445.902(1)(d) and (g).

1 1486. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair,
2 unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce”
3 Mich. Comp. Laws § 445.903(1). Defendants engaged in unfair, unconscionable, or deceptive
4 methods, acts or practices prohibited by the Michigan CPA, including: “(c) Representing that
5 goods or services have ... characteristics ... that they do not have;” “(e) Representing that
6 goods or services are of a particular standard ... if they are of another;” “(i) Making false or
7 misleading statements of fact concerning the reasons for, existence of, or amounts of price
8 reductions;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or
9 deceive the consumer, and which fact could not reasonably be known by the consumer;” “(bb)
10 Making a representation of fact or statement of fact material to the transaction such that a person
11 reasonably believes the represented or suggested state of affairs to be other than it actually is;”
12 and “(cc) Failing to reveal facts that are material to the transaction in light of representations of
13 fact made in a positive manner.” Mich. Comp. Laws § 445.903(1).

14 1487. In the course of its business, Defendants concealed and suppressed material facts
15 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
16 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
17 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
18 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
19 testing by way of deliberately induced false readings.

20 1488. Michigan State Class members had no way of discerning that Defendants’
21 representations were false and misleading because Defendants’ defeat device software was
22 extremely sophisticated technology. Plaintiff and Michigan State Class members did not and
23 could not unravel Defendants’ deception on their own.

24 1489. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
25 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
26 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
27 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
28

1 a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 1490. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
9 Michigan CPA.

10 1491. Defendants intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiff and the Michigan State Class.

12 1492. Defendants knew or should have known that their conduct violated the Michigan
13 CPA.

14 1493. Defendants owed Plaintiff and the Michigan State Class a duty to disclose the
15 illegality, public health and safety risks, the true nature of the Class Vehicles, because
16 Defendants:

17 A. possessed exclusive knowledge that they were manufacturing, selling, and
18 distributing vehicles throughout the United States that did not comply with regulations;

19 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
20 Class members; and/or

21 C. made incomplete representations about the Class Vehicles generally, and
22 the use of the defeat device in particular, while purposefully withholding material facts from
23 Plaintiff and the Michigan State Class that contradicted these representations.

24 1494. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
25 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
26 Plaintiff and the Michigan State Class.

27 1495. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental

1 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
2 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

3 1496. Defendants' violations present a continuing risk to Plaintiff, the Michigan State
4 Class, as well as to the general public. Defendants' unlawful acts and practices complained of
5 herein affect the public interest.

6 1497. Plaintiff and the Michigan State Class suffered ascertainable loss and actual
7 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
8 of and failure to disclose material information. Plaintiff and the Michigan State Class members
9 who purchased or leased the Class Vehicles would not have purchased or leased them at all
10 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
11 legal to sell—would have paid significantly less for them. Plaintiff and the Michigan State Class
12 also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had
13 an ongoing duty to all their customers to refrain from unfair and deceptive practices under the
14 Michigan CPA. All owners of Class Vehicles suffered ascertainable loss in the form of the
15 diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and
16 practices made in the course of Defendants' business.

17 1498. As a direct and proximate result of Defendants' violations of the Michigan CPA,
18 Plaintiff and the Michigan State Class have suffered injury-in-fact and/or actual damage.

19 1499. Plaintiff and the Michigan State Class seek injunctive relief to enjoin Defendants
20 from continuing its unfair and deceptive acts; monetary relief against Defendants measured as the
21 greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in
22 the amount of \$250 for Plaintiff and each Michigan State Class member; reasonable attorneys'
23 fees; and any other just and proper relief available under Mich. Comp. Laws § 445.911.

24 1500. Plaintiff and the Michigan State Class also seek punitive damages against
25 Defendants because it carried out despicable conduct with willful and conscious disregard of the
26 rights and safety of others. Defendants intentionally and willfully misrepresented the safety and
27 reliability of the Class Vehicles, concealed material facts that only they knew, and repeatedly
28 promised Plaintiff and Michigan State Class members that all vehicles were safe—all to avoid the

1 expense and public relations nightmare of correcting a flaw in the Class Vehicles. Defendants’
 2 unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

3 **MICHIGAN COUNT II:**
 4 **Breach of Express Warranty**
 5 **Mich. Comp. Laws §§ 440.2313 and 440.2860**
 6 **(On Behalf of the Michigan State Class)**

7 1501. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 8 fully set forth herein.

9 1502. Plaintiff Ira Margolis (for the purpose of this count, “Plaintiff”) brings this count
 10 on behalf of himself and the Michigan State Class against the Volkswagen and Audi Defendants
 11 (collectively for this count, “Defendants”).

12 1503. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 13 vehicles under Mich. Comp. Laws § 440.2104(1) and “sellers” of motor vehicles under
 14 § 440.2103(1)(d).

15 1504. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 16 of motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

17 1505. The Class Vehicles are and were at all relevant times “goods” within the meaning
 18 of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

19 1506. In connection with the purchase or lease of each one of its new vehicles,
 20 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 21 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 22 materials or workmanship.”

23 1507. Defendants also made numerous representations, descriptions, and promises to
 24 Plaintiff and Michigan State Class members regarding the performance and emission controls of
 25 their vehicles.

26 1508. For example, as shown below, Defendants included in the warranty booklets for
 27 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
 28 so as to conform at the time of sale with all applicable regulations of the United States
 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1509. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

1510. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1511. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1512. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 1513. Defendants' warranties formed a basis of the bargain that was reached when
6 Michigan State Class members purchased or leased Class Vehicles that are equipped with a defeat
7 device and non-compliant emission systems.

8 1514. Despite the existence of warranties, Defendants failed to inform Michigan State
9 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 1515. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1516. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1517. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Michigan State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 1518. Accordingly, recovery by the Michigan State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 1519. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Michigan State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1520. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Michigan State Class members' remedies would be insufficient to make them whole.

1521. Finally, because of Defendants' breach of warranty as set forth herein, Michigan State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

1522. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

1523. As a direct and proximate result of Defendants' breach of express warranties, Michigan State Class members have been damaged in an amount to be determined at trial.

**MICHIGAN COUNT III:
Breach of Implied Warranty of Merchantability
Mich. Comp. Laws §§ 440.2314 and 440.2860
(On Behalf of the Michigan State Class)**

1524. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1525. Plaintiff Ira Margolis (for the purpose of this count, "Plaintiff") brings this count on behalf of himself and the Michigan State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1526. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Mich. Comp. Laws § 440.2104(1) and "sellers" of motor vehicles under § 440.2103(1)(d).

1527. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

1528. The Class Vehicles are and were at all relevant times “goods” within the meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

1529. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Mich. Comp. Laws §§ 440.2314 and 440.2862.

1530. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1531. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1532. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Michigan State Class members have been damaged in an amount to be proven at trial.

**MINNESOTA COUNT I:
Violations of the Minnesota Prevention of Consumer Fraud Act
Minn. Stat. § 325F.68 *et seq.*
(On Behalf of the Minnesota State Class)**

1533. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1534. Plaintiff Mark Dressel (for the purpose of this count “Plaintiff”) brings this count on behalf of himself and the Minnesota State Class against all Defendants.

1535. The Class Vehicles constitute “merchandise” within the meaning of Minn. Stat. § 325F.68(2).

1536. The Minnesota Prevention of Consumer Fraud Act (“Minnesota CFA”) prohibits “[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely

1 thereon in connection with the sale of any merchandise, whether or not any person has in fact
2 been misled, deceived, or damaged thereby” Minn. Stat. § 325F.69(1). Defendants
3 participated in misleading, false, or deceptive acts that violated the Minnesota CFA.

4 1537. In the course of its business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
6 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
7 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
8 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
9 testing by way of deliberately induced false readings.

10 1538. Minnesota State Class members had no way of discerning that Defendants’
11 representations were false and misleading because Defendants’ defeat device software was
12 extremely sophisticated technology. Plaintiff and Minnesota State Class members did not and
13 could not unravel Defendants’ deception on their own.

14 1539. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
18 a transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 1540. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
26 Minnesota CFA.

27 1541. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiff and the Minnesota State Class.

1 1542. Defendants knew or should have known that their conduct violated the Minnesota
2 CFA.

3 1543. Defendants owed Plaintiff and the Minnesota State Class a duty to disclose the
4 illegality, public health and safety risks, the true nature of the Class Vehicles, because
5 Defendants:

6 A. possessed exclusive knowledge that they were manufacturing, selling, and
7 distributing vehicles throughout the United States that did not comply with regulations;

8 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
9 Class members; and/or

10 C. made incomplete representations about the Class Vehicles generally, and
11 the use of the defeat device in particular, while purposefully withholding material facts from
12 Plaintiff and the Minnesota State Class that contradicted these representations.

13 1544. Defendants' fraudulent use of the "defeat device" and its concealment of the true
14 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
15 Plaintiff and the Minnesota State Class.

16 1545. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
18 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
19 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

20 1546. Defendants' violations present a continuing risk to Plaintiff, the Minnesota State
21 Class, as well as to the general public. Defendants' unlawful acts and practices complained of
22 herein affect the public interest.

23 1547. Plaintiff and the Minnesota State Class suffered ascertainable loss and actual
24 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
25 of and failure to disclose material information. Plaintiff and the Minnesota State Class members
26 who purchased or leased the Class Vehicles would not have purchased or leased them at all
27 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
28 legal to sell—would have paid significantly less for them. Plaintiff and the Minnesota State Class

1 also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had
 2 an ongoing duty to all their customers to refrain from unfair and deceptive practices under the
 3 Minnesota CFA. All owners of Class Vehicles suffered ascertainable loss in the form of the
 4 diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and
 5 practices made in the course of Defendants' business.

6 1548. As a direct and proximate result of Defendants' violations of the Minnesota CFA,
 7 Plaintiff and the Minnesota State Class have suffered injury-in-fact and/or actual damage.

8 1549. Pursuant to Minn. Stat. § 8.31(3a), Plaintiff and the Minnesota State Class seek
 9 actual damages, attorneys' fees, and any other just and proper relief available under the
 10 Minnesota CFA.

11 1550. Plaintiff and the Minnesota State Class also seek punitive damages under Minn.
 12 Stat. § 549.20(1)(a) given the clear and convincing evidence that Defendants' acts show
 13 deliberate disregard for the rights or safety of others.

14 **MINNESOTA COUNT II:**
 15 **Violations of the Minnesota Uniform Deceptive Trade Practices Act**
 16 **Minn. Stat. § 325D.43-48 *et seq.***
(On Behalf of the Minnesota State Class)

17 1551. Plaintiffs incorporate by reference each preceding paragraph as though fully set
 18 forth herein.

19 1552. Plaintiff Mark Dressel (for the purpose of this count "Plaintiff") brings this count
 20 on behalf of himself and the Minnesota State Class against the Volkswagen and Audi Defendants
 21 (collectively for this count, "Defendants").

22 1553. The Minnesota Deceptive Trade Practices Act ("Minnesota DTPA") prohibits
 23 deceptive trade practices, which occur when a person "(5) represents that goods or services have
 24 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not
 25 have or that a person has a sponsorship, approval, status, affiliation, or connection that the person
 26 does not have;" "(7) represents that goods or services are of a particular standard, quality, or
 27 grade, or that goods are of a particular style or model, if they are of another;" and "(9) advertises
 28 goods or services with intent not to sell them as advertised." Minn. Stat. § 325D.44. In the course

1 of the Defendants' business, it engaged in deceptive practices by representing that Class Vehicles
2 have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do
3 not have; representing that Class Vehicles are of a particular standard, quality, or grade, or that
4 goods are of a particular style or model, if they are of another; and advertising Class Vehicles
5 with intent not to sell them as advertised. Defendants participated in misleading, false, or
6 deceptive acts that violated the Minnesota DTPA.

7 1554. By failing to disclose and by actively concealing the "defeat device" and the true
8 cleanliness and performance of the Class Vehicles, by marketing its vehicles as safe, reliable,
9 environmentally clean, efficient, and of high quality, and by presenting itself as a reputable
10 manufacturer that valued safety, environmental cleanliness, and efficiency, and stood behind its
11 vehicles after they were sold, Defendants engaged in deceptive business practices prohibited by
12 the Minnesota DTPA

13 1555. Defendants' actions as set forth above occurred in the conduct of trade or
14 commerce.

15 1556. In the course of its business, Defendants concealed and suppressed material facts
16 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
17 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
18 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
19 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
20 testing by way of deliberately induced false readings.

21 1557. Minnesota State Class members had no way of discerning that Defendants'
22 representations were false and misleading because Defendants' defeat device software was
23 extremely sophisticated technology. Plaintiff and Minnesota State Class members did not and
24 could not unravel Defendants' deception on their own.

25 1558. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
26 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
27 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
28 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of

1 a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 1559. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
9 Minnesota DTPA.

10 1560. Defendants intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiff and the Minnesota State Class.

12 1561. Defendants knew or should have known that their conduct violated the Minnesota
13 DTPA.

14 1562. Defendants owed Plaintiff and the Minnesota State Class a duty to disclose the
15 illegality, public health and safety risks, the true nature of the Class Vehicles, because
16 Defendants:

17 A. possessed exclusive knowledge that they were manufacturing, selling, and
18 distributing vehicles throughout the United States that did not comply with regulations;

19 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
20 Class members; and/or

21 C. made incomplete representations about the Class Vehicles generally, and
22 the use of the defeat device in particular, while purposefully withholding material facts from
23 Plaintiff and/or Class members that contradicted these representations.

24 1563. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
25 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
26 Plaintiff and the Minnesota State Class.

27 1564. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental

1 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
2 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

3 1565. Defendants' violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants' unlawful acts and practices complained of herein affect the public
5 interest.

6 1566. Plaintiff and the Minnesota State Class suffered ascertainable loss and actual
7 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
8 of and failure to disclose material information. Plaintiff and the Minnesota State Class members
9 who purchased or leased the Class Vehicles would not have purchased or leased them at all
10 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
11 legal to sell—would have paid significantly less for them. Plaintiff and the Minnesota State Class
12 also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had
13 an ongoing duty to all their customers to refrain from unfair and deceptive practices under the
14 Minnesota DTPA. All owners of Class Vehicles suffered ascertainable loss in the form of the
15 diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and
16 practices made in the course of Defendants' business.

17 1567. As a direct and proximate result of Defendants' violations of the Minnesota
18 DTPA, Plaintiff and the Minnesota State Class have suffered injury-in-fact and/or actual damage.

19 1568. Pursuant Minn. Stat. §§ 8.31(3a) and 325D.45, Plaintiff and the Minnesota State
20 Class seek actual damages, attorneys' fees, and any other just and proper relief available under
21 the Minnesota DTPA.

22 **MINNESOTA COUNT III:**
23 **Breach of Express Warranty**
24 **Minn. Stat. §§ 336.2-313 and 336.2A-210**
(On Behalf of the Minnesota State Class)

25 1569. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
26 fully set forth herein.

1 1570. Plaintiff Mark Dressel (for the purpose of this count “Plaintiff”) brings this count
2 on behalf of himself and the Minnesota State Class against the Volkswagen and Audi Defendants
3 (collectively for this count, “Defendants”).

4 1571. Defendants are and were at all relevant times “merchant[s]” with respect to motor
5 vehicles under Minn. Stat. § 336.2-104(1) and “sellers” of motor vehicles under § 336.2-
6 103(1)(d).

7 1572. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
8 of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

9 1573. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

11 1574. In connection with the purchase or lease of each one of its new vehicles,
12 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
13 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
14 materials or workmanship.”

15 1575. Defendants also made numerous representations, descriptions, and promises to
16 Plaintiff and Minnesota State Class members regarding the performance and emission controls of
17 their vehicles.

18 1576. For example, as shown below, Defendants included in the warranty booklets for
19 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
20 so as to conform at the time of sale with all applicable regulations of the United States
21 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1577. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

1578. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1579. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1580. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 1581. Defendants' warranties formed a basis of the bargain that was reached when
6 Minnesota State Class members purchased or leased Class Vehicles that are equipped with a
7 defeat device and non-compliant emission systems.

8 1582. Despite the existence of warranties, Defendants failed to inform Minnesota State
9 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 1583. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1584. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1585. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Minnesota State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 1586. Accordingly, recovery by the Minnesota State Class members is not restricted to
22 the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 1587. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Minnesota State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1588. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Minnesota State Class members' remedies would be insufficient to make them whole.

1589. Finally, because of Defendants' breach of warranty as set forth herein, Minnesota State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

1590. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

1591. As a direct and proximate result of Defendants' breach of express warranties, Minnesota State Class members have been damaged in an amount to be determined at trial.

**MINNESOTA COUNT IV:
Breach of Implied Warranty of Merchantability
Minn. Stat. §§ 336.2-314 and 336.2A-212
(On Behalf of the Minnesota State Class)**

1592. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1593. Plaintiff Mark Dressel (for the purpose of this count "Plaintiff") brings this count on behalf of himself and the Minnesota State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1594. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Minn. Stat. § 336.2-104(1) and "sellers" of motor vehicles under § 336.2-103(1)(d).

1595. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

1596. The Class Vehicles are and were at all relevant times “goods” within the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

1597. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Minn. Stat. §§ 336.2-314 and 336.2A-212.

1598. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1599. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1600. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Minnesota State Class members have been damaged in an amount to be proven at trial.

**MISSISSIPPI COUNT I:
Violations of Mississippi Consumer Protection Act
Miss. Code. Ann. § 75-24-1, *et seq.*
(On Behalf of the Mississippi State Class)**

1601. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1602. This count is brought on behalf of the Mississippi State Class against all Defendants.

1603. The Mississippi Consumer Protection Act (“Mississippi CPA”) prohibits “unfair or deceptive trade practices in or affecting commerce.” Miss. Code. Ann. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, “(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does

1 not have;” “(g) Representing that goods or services are of a particular standard, quality, or grade,
2 or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods
3 or services with intent not to sell them as advertised.” Miss. Code. Ann. § 75-24-5. Defendants
4 participated in deceptive trade practices that violated the Mississippi CPA as described herein,
5 including representing that Class Vehicles have characteristics, uses, benefits, and qualities which
6 they do not have; representing that Class Vehicles are of a particular standard and quality when
7 they are not; and advertising Class Vehicles with the intent not to sell them as advertised.

8 1604. In the course of its business, Defendants concealed and suppressed material facts
9 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
10 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
11 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
12 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
13 testing by way of deliberately induced false readings.

14 1605. Mississippi State Class members had no way of discerning that Defendants’
15 representations were false and misleading because Defendants’ defeat device software was
16 extremely sophisticated technology. Plaintiffs and Mississippi State Class members did not and
17 could not unravel Defendants’ deception on their own.

18 1606. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
19 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
20 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
21 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
22 a transaction involving Class Vehicles has been supplied in accordance with a previous
23 representation when it has not.

24 1607. The Clean Air Act and EPA regulations require that automobiles limit their
25 emissions output to specified levels. These laws are intended for the protection of public health
26 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
27 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
28 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available

1 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
2 Mississippi CPA.

3 1608. Defendants intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the Mississippi State Class.

5 1609. Defendants knew or should have known that their conduct violated the Mississippi
6 CPA.

7 1610. Defendants owed Plaintiffs and the Mississippi State Class a duty to disclose the
8 illegality, public health and safety risks, the true nature of the Class Vehicles, because
9 Defendants:

10 A. possessed exclusive knowledge that they were manufacturing, selling, and
11 distributing vehicles throughout the United States that did not comply with regulations;

12 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
13 Class members; and/or

14 C. made incomplete representations about the Class Vehicles generally, and
15 the use of the defeat device in particular, while purposefully withholding material facts from
16 Plaintiffs that contradicted these representations.

17 1611. Defendants' fraudulent use of the "defeat device" and its concealment of the true
18 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
19 Plaintiffs and the Mississippi State Class.

20 1612. Defendants' unfair or deceptive acts or practices were likely to and did in fact
21 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
22 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
23 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

24 1613. Defendants' violations present a continuing risk to Plaintiffs as well as to the
25 general public. Defendants' unlawful acts and practices complained of herein affect the public
26 interest.

27 1614. Plaintiffs and the Mississippi State Class suffered ascertainable loss and actual
28 damages as a direct and proximate result of Defendants' misrepresentations and its concealment

1 of and failure to disclose material information. Plaintiffs and the Mississippi State Class members
 2 who purchased or leased the Class Vehicles would not have purchased or leased them at all
 3 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
 4 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
 5 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 6 their customers to refrain from unfair and deceptive practices under the Mississippi CPA. All
 7 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 8 vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the course of
 9 Defendants’ business.

10 1615. As a direct and proximate result of Defendants’ violations of the Mississippi CPA,
 11 Plaintiffs and the Mississippi State Class have suffered injury-in-fact and/or actual damage.

12 1616. Plaintiffs’ seek actual damages in an amount to be determined at trial any other
 13 just and proper relief available under the Mississippi CPA.

14 **MISSISSIPPI COUNT II:**
 15 **Breach of Express Warranty**
 16 **Miss. Code §§ 75-2-313 and 75-2A-210**
(On Behalf of the Mississippi State Class)

17 1617. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 18 fully set forth herein.

19 1618. This count is brought on behalf of the Mississippi State Class against the
 20 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

21 1619. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 22 vehicles under Miss. Code § 75-2-104(1) and “sellers” of motor vehicles under § 75-2-103(1)(d).

23 1620. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 24 of motor vehicles under Miss. Code § 75-2A-103(1)(p).

25 1621. The Class Vehicles are and were at all relevant times “goods” within the meaning
 26 of Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).

27 1622. In connection with the purchase or lease of each one of its new vehicles,
 28 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever

1 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
2 materials or workmanship.”

3 1623. Defendants also made numerous representations, descriptions, and promises to
4 Plaintiffs and Mississippi State Class members regarding the performance and emission controls
5 of their vehicles.

6 1624. For example, as shown below, Defendants included in the warranty booklets for
7 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
8 so as to conform at the time of sale with all applicable regulations of the United States
9 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

19 1625. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
20 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 1626. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
24 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles (whichever
28 comes first). These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 1627. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
5 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
6 Design and Defect Warranty required by the EPA covers repair of emission control or emission
7 related parts, which fail to function or function improperly because of a defect in materials or
8 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
9 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
10 comes first.

11 1628. As manufacturers of light-duty vehicles, Defendants were required to provide
12 these warranties to purchasers or lessees of Class Vehicles.

13 1629. Defendants' warranties formed a basis of the bargain that was reached when
14 Mississippi State Class members purchased or leased Class Vehicles that are equipped with a
15 defeat device and non-compliant emission systems.

16 1630. Despite the existence of warranties, Defendants failed to inform Mississippi State
17 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
18 compliance with applicable state and federal emissions laws, and failed to fix the defective
19 emission components free of charge.

20 1631. Defendants breached the express warranty promising to repair and correct
21 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
22 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

23 1632. Affording Defendants a reasonable opportunity to cure their breach of written
24 warranties would be unnecessary and futile here.

25 1633. Furthermore, the limited warranty promising to repair and correct Defendants'
26 defect in materials and workmanship fails in its essential purpose because the contractual remedy
27 is insufficient to make Mississippi State Class members whole and because Defendants have
28 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1 1634. Accordingly, recovery by the Mississippi State Class members is not restricted to
2 the limited warranty promising to repair and correct Defendants' defect in materials and
3 workmanship, and they seek all remedies as allowed by law.

4 1635. Also, as alleged in more detail herein, at the time Defendants warranted and sold
5 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
6 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Mississippi State Class members were therefore
8 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 1636. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
11 and workmanship as many incidental and consequential damages have already been suffered
12 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
13 continued failure to provide such limited remedy within a reasonable time, and any limitation on
14 the Mississippi State Class members' remedies would be insufficient to make them whole.

15 1637. Finally, because of Defendants' breach of warranty as set forth herein, Mississippi
16 State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 1638. Defendants were provided notice of these issues by numerous complaints filed
20 against them, including the instant Complaint, within a reasonable amount of time.

21 1639. As a direct and proximate result of Defendants' breach of express warranties,
22 Mississippi State Class members have been damaged in an amount to be determined at trial.

23 **MISSISSIPPI COUNT III:**
24 **Breach of Implied Warranty of Merchantability**
25 **Miss. Code §§ 75-2-314 and 75-2A-212**
 (On Behalf of the Mississippi State Class)

26 1640. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.
28

1642. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Miss. Code § 75-2-104(1) and “sellers” of motor vehicles under § 75-2-103(1)(d).

1643. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
of motor vehicles under Miss. Code § 75-2A-103(1)(p).

1644. The Class Vehicles are and were at all relevant times “goods” within the meaning of Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).

9 1645. A warranty that the Class Vehicles were in merchantable condition and fit for the
10 ordinary purpose for which vehicles are used is implied by law pursuant to Miss. Code §§ 75-2-
11 314 and 75-2A-212.

12 1646. These Class Vehicles, when sold or leased and at all times thereafter, were not in
13 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
14 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
15 device and do not comply with federal and state emissions standards, rendering certain emissions
16 functions inoperative.

1647. Defendants were provided notice of these issues by the investigations of the EPA
and California state regulators, and numerous complaints filed against it including the instant
complaint, within a reasonable amount of time.

1648. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Mississippi State Class members have been damaged in an amount to be proven at trial.

**MISSOURI COUNT I:
Violations of the Missouri Merchandising Practices Act
Mo. Rev. Stat. § 407.010 *et seq.*
(On Behalf of the Missouri State Class)**

26 1649. Plaintiffs incorporate by reference each preceding paragraph as though fully set
27 forth herein.

1 1650. Plaintiff Connie Jones (for the purpose of this count, “Plaintiff”) brings this count
2 on behalf of herself and the Missouri State Class against all Defendants.

3 1651. Defendants, Plaintiff and the Missouri State Class are “persons” within the
4 meaning of Mo. Rev. Stat. § 407.010(5).

5 1652. Defendants engaged in “trade” or “commerce” in the State of Missouri within the
6 meaning of Mo. Rev. Stat. § 407.010(7).

7 1653. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the
8 “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation,
9 unfair practice, or the concealment, suppression, or omission of any material fact in connection
10 with the sale or advertisement of any merchandise Mo. Rev. Stat. § 407.020.

11 1654. In the course of its business, Defendants concealed and suppressed material facts
12 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
13 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
14 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
15 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
16 testing by way of deliberately induced false readings.

17 1655. Missouri State Class members had no way of discerning that Defendants’
18 representations were false and misleading because Defendants’ defeat device software was
19 extremely sophisticated technology. Plaintiff and Missouri State Class members did not and could
20 not unravel Defendants’ deception on their own.

21 1656. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
22 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
23 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
24 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
25 a transaction involving Class Vehicles has been supplied in accordance with a previous
26 representation when it has not.

27 1657. The Clean Air Act and EPA regulations require that automobiles limit their
28 emissions output to specified levels. These laws are intended for the protection of public health

1 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
2 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
3 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
4 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
5 Missouri MPA.

6 1658. Defendants intentionally and knowingly misrepresented material facts regarding
7 the Class Vehicles with intent to mislead Plaintiff and the Missouri State Class.

8 1659. Defendants knew or should have known that their conduct violated the Missouri
9 MPA.

10 1660. Defendants owed Plaintiff and the Missouri State Class a duty to disclose the
11 illegality, public health and safety risks, the true nature of the Class Vehicles, because
12 Defendants:

13 A. possessed exclusive knowledge that they were manufacturing, selling, and
14 distributing vehicles throughout the United States that did not comply with regulations;

15 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
16 Class members; and/or

17 C. made incomplete representations about the Class Vehicles generally, and
18 the use of the defeat device in particular, while purposefully withholding material facts from
19 Plaintiff and/or Class members that contradicted these representations.

20 1661. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
21 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
22 Plaintiff and the Missouri State Class.

23 1662. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
24 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
25 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
26 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

1663. Defendants' violations present a continuing risk to Plaintiff, the Missouri State Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

1664. Plaintiff and the Missouri State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to disclose material information. Plaintiff and the Missouri State Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiff and the Missouri State Class also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Missouri MPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.

1665. As a direct and proximate result of Defendants' violations of the Missouri MPA, Plaintiff and the Missouri State Class have suffered injury-in-fact and/or actual damage.

1666. Defendants are liable to Plaintiff and the Missouri State Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Defendants' unfair and deceptive practices, and any other just and proper relief under Mo. Rev. Stat. § 407.025.

**MISSOURI COUNT II:
Breach of Express Warranty
Mo. Stat. §§ 400.2-313 and 400.2A-210
(On Behalf of the Missouri State Class)**

1667. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1668. Plaintiff Connie Jones (for the purpose of this count, "Plaintiff") brings this count on behalf of herself and the Missouri State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1669. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Mo. Stat. § 400.2-104(1) and “sellers” of motor vehicles under § 400.2-103(1)(d).

1670. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Mo. Stat. § 400.2A-103(1)(p).

1671. The Class Vehicles are and were at all relevant times “goods” within the meaning of Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).

1672. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1673. Defendants also made numerous representations, descriptions, and promises to Plaintiff and Missouri State Class members regarding the performance and emission controls of their vehicles.

1674. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1 1675. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
2 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 1676. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 1677. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 1678. As manufacturers of light-duty vehicles, Defendants were required to provide
22 these warranties to purchasers or lessees of Class Vehicles.

23 1679. Defendants’ warranties formed a basis of the bargain that was reached when
24 Missouri State Class members purchased or leased Class Vehicles that are equipped with a defeat
25 device and non-compliant emission systems.

26 1680. Despite the existence of warranties, Defendants failed to inform Missouri State
27 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
28

1 compliance with applicable state and federal emissions laws, and failed to fix the defective
2 emission components free of charge.

3 1681. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 1682. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 1683. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy
10 is insufficient to make Missouri State Class members whole and because Defendants have failed
11 and/or have refused to adequately provide the promised remedies within a reasonable time.

12 1684. Accordingly, recovery by the Missouri State Class members is not restricted to the
13 limited warranty promising to repair and correct Defendants' defect in materials and
14 workmanship, and they seek all remedies as allowed by law.

15 1685. Also, as alleged in more detail herein, at the time Defendants warranted and sold
16 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
17 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. Missouri State Class members were therefore induced
19 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 1686. Moreover, many of the injuries flowing from the Class Vehicles cannot be
21 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
22 and workmanship as many incidental and consequential damages have already been suffered
23 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
24 continued failure to provide such limited remedy within a reasonable time, and any limitation on
25 the Missouri State Class members' remedies would be insufficient to make them whole.

26 1687. Finally, because of Defendants' breach of warranty as set forth herein, Missouri
27 State Class members assert, as additional and/or alternative remedies, the revocation of
28

1 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
2 currently owned or leased, and for such other incidental and consequential damages as allowed.

3 1688. Defendants were provided notice of these issues by numerous complaints filed
4 against them, including the instant Complaint, within a reasonable amount of time.

5 1689. As a direct and proximate result of Defendants' breach of express warranties,
6 Missouri State Class members have been damaged in an amount to be determined at trial.

7
8 **MISSOURI COUNT III:**
9 **Breach of Implied Warranty of Merchantability**
10 **Mo. Stat. §§ 400.2-314 and 400.2A-212**
11 **(On Behalf of the Missouri State Class)**

12 1690. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
13 paragraphs as though fully set forth herein.

14 1691. Plaintiff Connie Jones (for the purpose of this count, "Plaintiff") brings this count
15 on behalf of herself and the Missouri State Class against the Volkswagen and Audi Defendants
16 (collectively for this count, "Defendants").

17 1692. Defendants are and were at all relevant times "merchant[s]" with respect to motor
18 vehicles under Mo. Stat. § 400.2-104(1) and "sellers" of motor vehicles under § 400.2-103(1)(d).

19 1693. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
20 of motor vehicles under Mo. Stat. § 400.2A-103(1)(p).

21 1694. The Class Vehicles are and were at all relevant times "goods" within the meaning
22 of Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).

23 1695. A warranty that the Class Vehicles were in merchantable condition and fit for the
24 ordinary purpose for which vehicles are used is implied by law pursuant to Mo. Stat. § 400.2-314
25 and Mo. Stat. § 400.2A-212.

26 1696. These Class Vehicles, when sold or leased and at all times thereafter, were not in
27 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
28 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
device and do not comply with federal and state emissions standards, rendering certain emissions
functions inoperative.

1697. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1698. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Missouri State Class members have been damaged in an amount to be proven at trial.

**MONTANA COUNT I:
Violations of the Montana Unfair Trade Practices and Consumer Protection Act of 1973
Mont. Code Ann. § 30-14-101 *et seq.*
(On Behalf of the Montana State Class)**

1699. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1700. This count is brought on behalf of the Montana State Class against all Defendants.

1701. Defendants, Plaintiffs and the Montana State Class are "persons" within the meaning of Mont. Code Ann. § 30-14-102(6).

1702. Montana State Class members are "consumer[s]" under MONT. CODE ANN. § 30-14-102(1).

1703. The sale or lease of the Class Vehicles to Montana State Class members occurred within "trade and commerce" within the meaning of Mont. Code Ann. § 30-14-102(8), and Defendants committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in that statutory section.

1704. The Montana Unfair Trade Practices and Consumer Protection Act ("Montana CPA") makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Mont. Code Ann. § 30-14-103.

1705. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of

1 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
2 testing by way of deliberately induced false readings.

3 1706. Montana State Class members had no way of discerning that Defendants’
4 representations were false and misleading because Defendants’ defeat device software was
5 extremely sophisticated technology. Plaintiffs and Montana State Class members did not and
6 could not unravel Defendants’ deception on their own.

7 1707. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
8 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
9 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
10 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
11 a transaction involving Class Vehicles has been supplied in accordance with a previous
12 representation when it has not.

13 1708. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
17 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
18 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
19 Montana CPA.

20 1709. Defendants intentionally and knowingly misrepresented material facts regarding
21 the Class Vehicles with intent to mislead Plaintiffs and the Montana State Class.

22 1710. Defendants knew or should have known that their conduct violated the Montana
23 CPA.

24 1711. Defendants owed Plaintiffs and the Montana State Class a duty to disclose the
25 illegality, public health and safety risks, the true nature of the Class Vehicles, because
26 Defendants:

27 A. possessed exclusive knowledge that they were manufacturing, selling, and
28 distributing vehicles throughout the United States that did not comply with regulations;

1 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles generally, and
4 the use of the defeat device in particular, while purposefully withholding material facts from
5 Plaintiffs that contradicted these representations.

6 1712. Defendants' fraudulent use of the "defeat device" and its concealment of the true
7 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
8 Plaintiffs and the Montana State Class.

9 1713. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
12 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

13 1714. Defendants' violations present a continuing risk to Plaintiffs as well as to the
14 general public. Defendants' unlawful acts and practices complained of herein affect the public
15 interest.

16 1715. Plaintiffs and the Montana State Class suffered ascertainable loss and actual
17 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
18 of and failure to disclose material information. Plaintiffs and the Montana State Class members
19 who purchased or leased the Class Vehicles would not have purchased or leased them at all
20 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
21 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
22 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
23 their customers to refrain from unfair and deceptive practices under the Montana CPA. All
24 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
25 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
26 Defendants' business.

27 1716. As a direct and proximate result of Defendants' violations of the Montana CPA,
28 Plaintiffs and the Montana State Class have suffered injury-in-fact and/or actual damage.

1717. Because Defendants' unlawful methods, acts, and practices have caused Montana State Class members to suffer an ascertainable loss of money and property, the Montana State Class seeks from Defendants actual damages or \$500, whichever is greater, discretionary treble damages, reasonable attorneys' fees, an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, and any other relief the Court considers necessary or proper, under Mont. Code Ann. § 30-14-133.

**MONTANA COUNT II:
Breach of Express Warranty
Mont. Code §§ 30-2-313 and 30-2A-210
(On Behalf of the Montana State Class)**

1718. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1719. This count is brought on behalf of the Montana State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1720. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Mont. Code § 30-2-104(1) and "sellers" of motor vehicles under § 30-2-103(1)(d).

1721. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Mont. Code § 30-2A-103(1)(p).

1722. The Class Vehicles are and were at all relevant times "goods" within the meaning of Mont. Code §§ 30-2-105(1) and 30-2A-103(1)(h).

1723. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover "any repair to correct a manufacturers defect in materials or workmanship."

1724. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Montana State Class members regarding the performance and emission controls of their vehicles.

1725. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were "designed, built and equipped

1 so as to conform at the time of sale with all applicable regulations of the United States
2 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

12 1726. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
13 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
14 Warranty.”

15 1727. The EPA requires vehicle manufacturers to provide a Performance Warranty with
16 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
17 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
18 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
19 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
20 emission control components are covered for the first eight years or 80,000 miles (whichever
21 comes first). These major emission control components subject to the longer warranty include the
22 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
23 device or computer.

24 1728. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
25 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
26 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
27 Design and Defect Warranty required by the EPA covers repair of emission control or emission
28 related parts, which fail to function or function improperly because of a defect in materials or

1 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
2 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
3 comes first.

4 1729. As manufacturers of light-duty vehicles, Defendants were required to provide
5 these warranties to purchasers or lessees of Class Vehicles.

6 1730. Defendants' warranties formed a basis of the bargain that was reached when
7 Montana State Class members purchased or leased Class Vehicles that are equipped with a defeat
8 device and non-compliant emission systems.

9 1731. Despite the existence of warranties, Defendants failed to inform Montana State
10 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
11 compliance with applicable state and federal emissions laws, and failed to fix the defective
12 emission components free of charge.

13 1732. Defendants breached the express warranty promising to repair and correct
14 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
15 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

16 1733. Affording Defendants a reasonable opportunity to cure their breach of written
17 warranties would be unnecessary and futile here.

18 1734. Furthermore, the limited warranty promising to repair and correct Defendants'
19 defect in materials and workmanship fails in its essential purpose because the contractual remedy
20 is insufficient to make Montana State Class members whole and because Defendants have failed
21 and/or have refused to adequately provide the promised remedies within a reasonable time.

22 1735. Accordingly, recovery by the Montana State Class members is not restricted to the
23 limited warranty promising to repair and correct Defendants' defect in materials and
24 workmanship, and they seek all remedies as allowed by law.

25 1736. Also, as alleged in more detail herein, at the time Defendants warranted and sold
26 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
27 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
28

1 material facts regarding the Class Vehicles. Montana State Class members were therefore induced
2 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 1737. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
5 and workmanship as many incidental and consequential damages have already been suffered
6 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
7 continued failure to provide such limited remedy within a reasonable time, and any limitation on
8 the Montana State Class members' remedies would be insufficient to make them whole.

9 1738. Finally, because of Defendants' breach of warranty as set forth herein, Montana
10 State Class members assert, as additional and/or alternative remedies, the revocation of
11 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
12 currently owned or leased, and for such other incidental and consequential damages as allowed.

13 1739. Defendants were provided notice of these issues by numerous complaints filed
14 against them, including the instant Complaint, within a reasonable amount of time.

15 1740. As a direct and proximate result of Defendants' breach of express warranties,
16 Montana State Class members have been damaged in an amount to be determined at trial.

17 **MONTANA COUNT III:**
18 **Breach of Implied Warranty of Merchantability**
19 **Mont. Code §§ 30-2-314 and 30-2A-212**
(On Behalf of the Montana State Class)

20 1741. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
21 paragraphs as though fully set forth herein.

22 1742. This count is brought on behalf of the Montana State Class against the
23 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

24 1743. Defendants are and were at all relevant times "merchant[s]" with respect to motor
25 vehicles under Mont. Code § 30-2-104(1) and "sellers" of motor vehicles under § 30-2-103(1)(d).

26 1744. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
27 of motor vehicles under Mont. Code § 30-2A-103(1)(p).
28

1745. The Class Vehicles are and were at all relevant times “goods” within the meaning of Mont. Code §§ 30-2-105(1) and 30-2A-103(1)(h).

1746. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Mont. Code §§ 30-2-314 and 30-2A-212.

1747. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1748. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1749. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Montana State Class members have been damaged in an amount to be proven at trial.

NEBRASKA COUNT I:
Violations of the Nebraska Consumer Protection Act
Neb. Rev. Stat. § 59-1601 *et seq.*
(On Behalf of the Nebraska State Class)

1750. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1751. This count is brought on behalf of the Nebraska State Class against all Defendants.

1752. Defendants, Plaintiffs and Nebraska State Class members are “person[s]” under the Nebraska Consumer Protection Act (“Nebraska CPA”), Neb. Rev. Stat. § 59-1601(1).

1753. Defendants’ actions as set forth herein occurred in the conduct of trade or commerce as defined under Neb. Rev. Stat. § 59-1601(2).

1 1754. The Nebraska CPA prohibits “unfair or deceptive acts or practices in the conduct
2 of any trade or commerce.” Neb. Rev. Stat. § 59-1602. The conduct Defendants engaged in as set
3 forth herein constitutes unfair or deceptive acts or practices.

4 1755. In the course of its business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
6 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
7 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
8 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
9 testing by way of deliberately induced false readings.

10 1756. Nebraska State Class members had no way of discerning that Defendants’
11 representations were false and misleading because Defendants’ defeat device software was
12 extremely sophisticated technology. Plaintiffs and Nebraska State Class members did not and
13 could not unravel Defendants’ deception on their own.

14 1757. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
18 a transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 1758. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
26 Nebraska CPA.

27 1759. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiffs and the Nebraska State Class.

1 1760. Defendants knew or should have known that their conduct violated the Nebraska
2 CPA.

3 1761. Defendants owed Plaintiffs and the Nebraska State Class a duty to disclose the
4 illegality, public health and safety risks, the true nature of the Class Vehicles, because
5 Defendants:

6 A. possessed exclusive knowledge that they were manufacturing, selling, and
7 distributing vehicles throughout the United States that did not comply with regulations;

8 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
9 Class members; and/or

10 C. made incomplete representations about the Class Vehicles generally, and
11 the use of the defeat device in particular, while purposefully withholding material facts from
12 Plaintiffs that contradicted these representations.

13 1762. Defendants' fraudulent use of the "defeat device" and its concealment of the true
14 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
15 Plaintiffs and the Nebraska State Class.

16 1763. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
18 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
19 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

20 1764. Defendants' violations present a continuing risk to Plaintiffs as well as to the
21 general public. Defendants' unlawful acts and practices complained of herein affect the public
22 interest.

23 1765. Plaintiffs and the Nebraska State Class suffered ascertainable loss and actual
24 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
25 of and failure to disclose material information. Plaintiffs and the Nebraska State Class members
26 who purchased or leased the Class Vehicles would not have purchased or leased them at all
27 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
28 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished

1 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 2 their customers to refrain from unfair and deceptive practices under the Nebraska CPA. All
 3 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 4 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
 5 Defendants' business.

6 1766. As a direct and proximate result of Defendants' violations of the Nebraska CPA,
 7 Plaintiffs and the Nebraska State Class have suffered injury-in-fact and/or actual damage.

8 1767. Because Defendants' conduct caused injury to Nebraska State Class members'
 9 property through violations of the Nebraska CPA, the Nebraska State Class seeks recovery of
 10 actual damages, as well as enhanced damages up to \$1,000, an order enjoining Defendants' unfair
 11 or deceptive acts and practices, costs of Court, reasonable attorneys' fees, and any other just and
 12 proper relief available under Neb. Rev. Stat. § 59-1609.

13 **NEBRASKA COUNT II:**
 14 **Breach of Express Warranty**
 15 **Neb. Rev. St. U.C.C. §§ 2-313 and 2A-210**
 16 **(On Behalf of the Nebraska State Class)**

17 1768. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 18 fully set forth herein.

19 1769. This count is brought on behalf of the Nebraska State Class against the
 20 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

21 1770. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 22 vehicles under Neb. Rev. St. U.C.C. § 2-104(1) and "sellers" of motor vehicles under § 2-
 23 103(1)(d).

24 1771. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 25 of motor vehicles under Neb. Rev. St. U.C.C. § 2A-103(1)(p).

26 1772. The Class Vehicles are and were at all relevant times "goods" within the meaning
 27 of Neb. Rev. St. U.C.C. §§ 2-105(1) and 2A-103(1)(h).

28 1773. In connection with the purchase or lease of each one of its new vehicles,
 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever

1 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
2 materials or workmanship.”

3 1774. Defendants also made numerous representations, descriptions, and promises to
4 Plaintiffs and Nebraska State Class members regarding the performance and emission controls of
5 their vehicles.

6 1775. For example, as shown below, Defendants included in the warranty booklets for
7 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
8 so as to conform at the time of sale with all applicable regulations of the United States
9 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applica-
ble regulations of the United States Environ-
mental Protection Agency (EPA), and
- is free from defects in material and work-
manship which causes the vehicle to fail to
conform with EPA regulations for 2 years af-
ter the date of first use or delivery of the ve-
hicle to the original retail purchaser or origi-
nal lessee or until the vehicle has been driv-
en 24,000 miles, whichever occurs first.

19 1776. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
20 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 1777. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
24 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles (whichever
28 comes first). These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 1778. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
5 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
6 Design and Defect Warranty required by the EPA covers repair of emission control or emission
7 related parts, which fail to function or function improperly because of a defect in materials or
8 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
9 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
10 comes first.

11 1779. As manufacturers of light-duty vehicles, Defendants were required to provide
12 these warranties to purchasers or lessees of Class Vehicles.

13 1780. Defendants' warranties formed a basis of the bargain that was reached when
14 Nebraska State Class members purchased or leased Class Vehicles that are equipped with a defeat
15 device and non-compliant emission systems.

16 1781. Despite the existence of warranties, Defendants failed to inform Nebraska State
17 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
18 compliance with applicable state and federal emissions laws, and failed to fix the defective
19 emission components free of charge.

20 1782. Defendants breached the express warranty promising to repair and correct
21 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
22 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

23 1783. Affording Defendants a reasonable opportunity to cure their breach of written
24 warranties would be unnecessary and futile here.

25 1784. Furthermore, the limited warranty promising to repair and correct Defendants'
26 defect in materials and workmanship fails in its essential purpose because the contractual remedy
27 is insufficient to make Nebraska State Class members whole and because Defendants have failed
28 and/or have refused to adequately provide the promised remedies within a reasonable time.

1785. Accordingly, recovery by the Nebraska State Class members is not restricted to the limited warranty promising to repair and correct Defendants' defect in materials and workmanship, and they seek all remedies as allowed by law.

1786. Also, as alleged in more detail herein, at the time Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Nebraska State Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1787. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Nebraska State Class members' remedies would be insufficient to make them whole.

1788. Finally, because of Defendants' breach of warranty as set forth herein, Nebraska State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

1789. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

1790. As a direct and proximate result of Defendants' breach of express warranties, Nebraska State Class members have been damaged in an amount to be determined at trial.

**NEBRASKA COUNT III:
Breach of Implied Warranty of Merchantability
Neb. Rev. St. U.C.C. §§ 2-314 and 2A-212
(On Behalf of the Nebraska State Class)**

1791. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1792. This count is brought on behalf of the Nebraska State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

1793. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Neb. Rev. St. U.C.C. § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).

1794. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Neb. Rev. St. U.C.C. § 2A-103(1)(p).

1795. The Class Vehicles are and were at all relevant times “goods” within the meaning of Neb. Rev. St. U.C.C. §§ 2-105(1) and 2A-103(1)(h).

1796. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Neb. Rev. St. U.C.C. §§ 2-314 and 2A-212.

1797. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1798. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1799. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Nebraska State Class members have been damaged in an amount to be proven at trial.

NEVADA COUNT I:
Violations of the Nevada Deceptive Trade Practices Act
Nev. Rev. Stat. § 598.0903 *et seq.*
(On Behalf of the Nevada State Class)

1800. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1801. This count is brought on behalf of the Nevada State Class against all Defendants.

1802. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), Nev. Rev. Stat. § 598.0903, *et seq.* prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0915 provides that a person engages in a “deceptive trade practice” if, in the course of business or occupation, the person: “5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith”; “7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model”; “9. Advertises goods or services with intent not to sell or lease them as advertised”; or “15. Knowingly makes any other false representation in a transaction.”

1803. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

1804. Nevada State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and Nevada State Class members did not and could not unravel Defendants’ deception on their own.

1805. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.

1806. The Clean Air Act and EPA regulations require that automobiles limit their emissions output to specified levels. These laws are intended for the protection of public health and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available for purchase, Defendants violated federal law and therefore engaged in conduct that violates the Nevada DTPA.

1807. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiffs and the Nevada State Class.

1808. Defendants knew or should have known that their conduct violated the Nevada DTPA.

1809. Defendants owed Plaintiffs and the Nevada State Class a duty to disclose the illegality, public health and safety risks, the true nature of the Class Vehicles, because Defendants:

A. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with regulations;

B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or Class members; and/or

C. made incomplete representations about the Class Vehicles generally, and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1810. Defendants’ fraudulent use of the “defeat device” and its concealment of the true characteristics of the Class Vehicles’ fuel consumption and CO₂ emissions were material to Plaintiffs and the Nevada State Class.

1811. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

1812. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

1813. Plaintiffs and the Nevada State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the Nevada State Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Nevada DTPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.

**NEVADA COUNT II:
Breach of Express Warranty
N.R.S. §§ 104.2313 and 104A.2210
(On Behalf of the Nevada State Class)**

1814. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1815. This count is brought on behalf of the Nevada State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1816. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under N.R.S. § 104.2104(1) and "sellers" of motor vehicles under § 104.2103(1)(c).

1817. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under N.R.S. § 104A.2103(1)(p).

1818. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).

1819. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1820. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Nevada State Class members regarding the performance and emission controls of their vehicles.

1821. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1822. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1823. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major

1 emission control components are covered for the first eight years or 80,000 miles (whichever
2 comes first). These major emission control components subject to the longer warranty include the
3 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
4 device or computer.

5 1824. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
6 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
7 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
8 Design and Defect Warranty required by the EPA covers repair of emission control or emission
9 related parts, which fail to function or function improperly because of a defect in materials or
10 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
11 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
12 comes first.

13 1825. As manufacturers of light-duty vehicles, Defendants were required to provide
14 these warranties to purchasers or lessees of Class Vehicles.

15 1826. Defendants' warranties formed a basis of the bargain that was reached when
16 Nevada State Class members purchased or leased Class Vehicles that are equipped with a defeat
17 device and non-compliant emission systems.

18 1827. Despite the existence of warranties, Defendants failed to inform Nevada State
19 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
20 compliance with applicable state and federal emissions laws, and failed to fix the defective
21 emission components free of charge.

22 1828. Defendants breached the express warranty promising to repair and correct
23 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
24 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

25 1829. Affording Defendants a reasonable opportunity to cure their breach of written
26 warranties would be unnecessary and futile here.

27 1830. Furthermore, the limited warranty promising to repair and correct Defendants'
28 defect in materials and workmanship fails in its essential purpose because the contractual remedy

1 is insufficient to make Nevada State Class members whole and because Defendants have failed
2 and/or have refused to adequately provide the promised remedies within a reasonable time.

3 1831. Accordingly, recovery by the Nevada State Class members is not restricted to the
4 limited warranty promising to repair and correct Defendants' defect in materials and
5 workmanship, and they seek all remedies as allowed by law.

6 1832. Also, as alleged in more detail herein, at the time Defendants warranted and sold
7 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
8 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. Nevada State Class members were therefore induced
10 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 1833. Moreover, many of the injuries flowing from the Class Vehicles cannot be
12 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
13 and workmanship as many incidental and consequential damages have already been suffered
14 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
15 continued failure to provide such limited remedy within a reasonable time, and any limitation on
16 the Nevada State Class members' remedies would be insufficient to make them whole.

17 1834. Finally, because of Defendants' breach of warranty as set forth herein, Nevada
18 State Class members assert, as additional and/or alternative remedies, the revocation of
19 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
20 currently owned or leased, and for such other incidental and consequential damages as allowed.

21 1835. Defendants were provided notice of these issues by numerous complaints filed
22 against them, including the instant Complaint, within a reasonable amount of time.

23 1836. As a direct and proximate result of Defendants' breach of express warranties,
24 Nevada State Class members have been damaged in an amount to be determined at trial.

**NEVADA COUNT III:
Breach of Implied Warranty of Merchantability
N.R.S. §§ 104.2314 and 104A.2212
(On Behalf of the Nevada State Class)**

1837. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1838. This count is brought on behalf of the Nevada State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

1839. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under N.R.S. § 104.2104(1) and “sellers” of motor vehicles under § 104.2103(1)(c).

1840. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under N.R.S. § 104A.2103(1)(p).

1841. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).

1842. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to N.R.S. §§ 104.2314 and 104A.2212.

1843. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1844. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1845. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Nevada State Class members have been damaged in an amount to be proven at trial.

**NEW HAMPSHIRE COUNT I:
Violations of the New Hampshire Consumer Protection Act
N.H. Rev. Stat. § 358-A:1 *et seq.*
(On Behalf of the New Hampshire State Class)**

1846. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1847. This count is brought on behalf of the New Hampshire State Class against all Defendants.

1848. Plaintiffs, the New Hampshire State Class, and Defendants are “persons” under the New Hampshire Consumer Protection Act (“New Hampshire CPA”), N.H. Rev. Stat. § 358-A:1.

1849. Defendants’ actions as set forth herein occurred in the conduct of trade or commerce as defined under N.H. Rev. Stat. § 358-A:1.

1850. The New Hampshire CPA prohibits a person, in the conduct of any trade or commerce, from using “any unfair or deceptive act or practice,” including “but ... not limited to, the following: ... (V) Representing that goods or services have ... characteristics, ... uses, benefits, or quantities that they do not have;” “(VII) Representing that goods or services are of a particular standard, quality, or grade, ... if they are of another;” and “(IX) Advertising goods or services with intent not to sell them as advertised.” N.H. Rev. Stat. § 358-A:2.

1851. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

1852. New Hampshire State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and New Hampshire State Class members did not and could not unravel Defendants’ deception on their own.

1 1853. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
5 a transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 1854. The Clean Air Act and EPA regulations require that automobiles limit their
8 emissions output to specified levels. These laws are intended for the protection of public health
9 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
10 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
11 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
12 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
13 New Hampshire CPA.

14 1855. Defendants intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiffs and the New Hampshire State Class.

16 1856. Defendants knew or should have known that their conduct violated the New
17 Hampshire CPA.

18 1857. Defendants owed Plaintiffs and the New Hampshire State Class a duty to disclose
19 the illegality, public health and safety risks, the true nature of the Class Vehicles, because
20 Defendants:

21 A. possessed exclusive knowledge that they were manufacturing, selling, and
22 distributing vehicles throughout the United States that did not comply with regulations;

23 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
24 Class members; and/or

25 C. made incomplete representations about the Class Vehicles generally, and
26 the use of the defeat device in particular, while purposefully withholding material facts from
27 Plaintiffs that contradicted these representations.
28

1858. Defendants' fraudulent use of the "defeat device" and its concealment of the true characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to Plaintiffs and the New Hampshire State Class.

1859. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

1860. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

1861. Plaintiffs and the New Hampshire State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the New Hampshire State Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the New Hampshire CPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.

**NEW HAMPSHIRE COUNT II:
Breach of Express Warranty
N.H. Rev. Stat. §§ 382-A:2-313 and 382-A:2A-210
(On Behalf of the New Hampshire State Class)**

1862. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1863. This count is brought on behalf of the New Hampshire State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1864. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under N.H. Rev. Stat. § 382-A:2-104(1) and “sellers” of motor vehicles under § 382-A:2-103(1)(d).

1865. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).

1866. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.H. Rev. Stat. §§ 382-A:2-105(1) and 382-A:2A-103(1)(h).

1867. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1868. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and New Hampshire State Class members regarding the performance and emission controls of their vehicles.

1869. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1 1870. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
2 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 1871. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 1872. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 1873. As manufacturers of light-duty vehicles, Defendants were required to provide
22 these warranties to purchasers or lessees of Class Vehicles.

23 1874. Defendants’ warranties formed a basis of the bargain that was reached when New
24 Hampshire State Class members purchased or leased Class Vehicles that are equipped with a
25 defeat device and non-compliant emission systems.

26 1875. Despite the existence of warranties, Defendants failed to inform New Hampshire
27 State Class members that the Class Vehicles were intentionally designed and manufactured to be
28

1 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
2 emission components free of charge.

3 1876. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 1877. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 1878. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy
10 is insufficient to make New Hampshire State Class members whole and because Defendants have
11 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

12 1879. Accordingly, recovery by the New Hampshire State Class members is not
13 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
14 and workmanship, and they seek all remedies as allowed by law.

15 1880. Also, as alleged in more detail herein, at the time Defendants warranted and sold
16 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
17 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. New Hampshire State Class members were therefore
19 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 1881. Moreover, many of the injuries flowing from the Class Vehicles cannot be
21 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
22 and workmanship as many incidental and consequential damages have already been suffered
23 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
24 continued failure to provide such limited remedy within a reasonable time, and any limitation on
25 the New Hampshire State Class members' remedies would be insufficient to make them whole.

26 1882. Finally, because of Defendants' breach of warranty as set forth herein, New
27 Hampshire State Class members assert, as additional and/or alternative remedies, the revocation
28

1 of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 2 currently owned or leased, and for such other incidental and consequential damages as allowed.

3 1883. Defendants were provided notice of these issues by numerous complaints filed
 4 against them, including the instant Complaint, within a reasonable amount of time.

5 1884. As a direct and proximate result of Defendants' breach of express warranties, New
 6 Hampshire State Class members have been damaged in an amount to be determined at trial.

7 **NEW HAMPSHIRE COUNT III:**
 8 **Breach of Implied Warranty of Merchantability**
 9 **N.H. Rev. Stat. §§ 382-A:2-314 and 382-A:2A-212**
 10 **(On Behalf of the New Hampshire State Class)**

11 1885. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 12 paragraphs as though fully set forth herein.

13 1886. This count is brought on behalf of the New Hampshire State Class against the
 14 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

15 1887. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 16 vehicles under N.H. Rev. Stat. § 382-A:2-104(1) and "sellers" of motor vehicles under § 382-
 17 A:2-103(1)(d).

18 1888. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 19 of motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).

20 1889. The Class Vehicles are and were at all relevant times "goods" within the meaning
 21 of N.H. Rev. Stat. §§ 382-A:2-105(1) and 382-A:2A-103(1)(h).

22 1890. A warranty that the Class Vehicles were in merchantable condition and fit for the
 23 ordinary purpose for which vehicles are used is implied by law pursuant to N.H. Rev. Stat.
 24 §§ 382-A:2-314 and 382-A:2A-212.

25 1891. These Class Vehicles, when sold or leased and at all times thereafter, were not in
 26 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
 27 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
 28 device and do not comply with federal and state emissions standards, rendering certain emissions
 functions inoperative.

1892. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1893. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, New Hampshire State Class members have been damaged in an amount to be proven at trial.

**NEW JERSEY COUNT I:
Violations of the New Jersey Consumer Fraud Act
N.J. Stat. Ann. § 56:8-1 *et seq.*
(On Behalf of the New Jersey State Class)**

1894. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.

1895. Plaintiff Raghu Katta (for the purpose of this count, "Plaintiff") brings this count on behalf of himself and the New Jersey State Class against all Defendants.

1896. Plaintiff, the New Jersey State Class members, and Defendants are "persons" under the New Jersey Consumer Fraud Act ("New Jersey CFA"), N.J. Stat. § 56:8-1(d).

1897. Defendants engaged in "sales" of "merchandise" within the meaning of N.J. Stat. § 56:8-1(c), (e). Defendants' actions as set forth herein occurred in the conduct of trade or commerce.

1898. The New Jersey CFA makes unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby." N.J. Stat. § 56:8-2.

1899. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during

1 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
2 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
3 testing by way of deliberately induced false readings.

4 1900. New Jersey State Class members had no way of discerning that Defendants’
5 representations were false and misleading because Defendants’ defeat device software was
6 extremely sophisticated technology. Plaintiff and New Jersey State Class members did not and
7 could not unravel Defendants’ deception on their own.

8 1901. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
9 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
10 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
11 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
12 a transaction involving Class Vehicles has been supplied in accordance with a previous
13 representation when it has not.

14 1902. The Clean Air Act and EPA regulations require that automobiles limit their
15 emissions output to specified levels. These laws are intended for the protection of public health
16 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
17 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
18 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
19 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
20 New Jersey CFA.

21 1903. Defendants intentionally and knowingly misrepresented material facts regarding
22 the Class Vehicles with intent to mislead Plaintiff and the New Jersey State Class.

23 1904. Defendants knew or should have known that their conduct violated the New Jersey
24 CFA.

25 1905. Defendants owed Plaintiff and the New Jersey State Class a duty to disclose the
26 illegality, public health and safety risks, the true nature of the Class Vehicles, because
27 Defendants:
28

1 A. possessed exclusive knowledge that they were manufacturing, selling, and
2 distributing vehicles throughout the United States that did not comply with regulations;

3 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
4 Class members; and/or

5 C. made incomplete representations about the Class Vehicles generally, and
6 the use of the defeat device in particular, while purposefully withholding material facts from
7 Plaintiff and/or Class members that contradicted these representations.

8 1906. Defendants' fraudulent use of the "defeat device" and its concealment of the true
9 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
10 Plaintiff and the New Jersey State Class.

11 1907. Defendants' unfair or deceptive acts or practices were likely to and did in fact
12 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
13 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
14 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

15 1908. Defendants' violations present a continuing risk to Plaintiff, the New Jersey State
16 Class, as well as to the general public. Defendants' unlawful acts and practices complained of
17 herein affect the public interest.

18 1909. Plaintiff and the New Jersey State Class suffered ascertainable loss and actual
19 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
20 of and failure to disclose material information. Plaintiff and the New Jersey State Class members
21 who purchased or leased the Class Vehicles would not have purchased or leased them at all
22 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
23 legal to sell—would have paid significantly less for them. Plaintiff and the New Jersey State
24 Class also suffered diminished value of their vehicles, as well as lost or diminished use.
25 Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive
26 practices under the New Jersey CFA. All owners of Class Vehicles suffered ascertainable loss in
27 the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair
28 acts and practices made in the course of Defendants' business.

1910. As a direct and proximate result of Defendants' violations of the New Jersey CFA, Plaintiffs and the New Jersey State Class have suffered injury-in-fact and/or actual damage in an amount to be proven at trial, and seek all just and proper remedies, including, but not limited to, actual and statutory damages, treble damages, an order enjoining Defendants' deceptive and unfair conduct, costs and reasonable attorneys' fees under N.J. Stat. § 56:8-19, and all other just and appropriate relief.

**NEW JERSEY COUNT II:
Breach of Express Warranty
N.J.S. 12A:2-313 and 2A-210
(On Behalf of the New Jersey State Class)**

1911. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1912. Plaintiff Raghu Katta (for the purpose of this count, "Plaintiff") brings this count on behalf of himself and the New Jersey State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1913. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under N.J.S. 12A:2-104(1) and "sellers" of motor vehicles under 2-103(1)(d).

1914. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under N.J.S. 12A:2A-103(1)(p).

1915. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.J.S. 12A:2-105(1) and 2A-103(1)(h).

1916. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover "any repair to correct a manufacturers defect in materials or workmanship."

1917. Defendants also made numerous representations, descriptions, and promises to Plaintiff and New Jersey State Class members regarding the performance and emission controls of their vehicles.

1918. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1919. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1920. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1921. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles’ emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The

1 Design and Defect Warranty required by the EPA covers repair of emission control or emission
2 related parts, which fail to function or function improperly because of a defect in materials or
3 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
4 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
5 comes first.

6 1922. As manufacturers of light-duty vehicles, Defendants were required to provide
7 these warranties to purchasers or lessees of Class Vehicles.

8 1923. Defendants' warranties formed a basis of the bargain that was reached when New
9 Jersey State Class members purchased or leased Class Vehicles that are equipped with a defeat
10 device and non-compliant emission systems.

11 1924. Despite the existence of warranties, Defendants failed to inform New Jersey State
12 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
13 compliance with applicable state and federal emissions laws, and failed to fix the defective
14 emission components free of charge.

15 1925. Defendants breached the express warranty promising to repair and correct
16 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
17 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

18 1926. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile here.

20 1927. Furthermore, the limited warranty promising to repair and correct Defendants'
21 defect in materials and workmanship fails in its essential purpose because the contractual remedy
22 is insufficient to make New Jersey State Class members whole and because Defendants have
23 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

24 1928. Accordingly, recovery by the New Jersey State Class members is not restricted to
25 the limited warranty promising to repair and correct Defendants' defect in materials and
26 workmanship, and they seek all remedies as allowed by law.

27 1929. Also, as alleged in more detail herein, at the time Defendants warranted and sold
28 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did

1 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
 2 material facts regarding the Class Vehicles. New Jersey State Class members were therefore
 3 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

4 1930. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 5 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
 6 and workmanship as many incidental and consequential damages have already been suffered
 7 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
 8 continued failure to provide such limited remedy within a reasonable time, and any limitation on
 9 the New Jersey State Class members' remedies would be insufficient to make them whole.

10 1931. Finally, because of Defendants' breach of warranty as set forth herein, New Jersey
 11 State Class members assert, as additional and/or alternative remedies, the revocation of
 12 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 13 currently owned or leased, and for such other incidental and consequential damages as allowed.

14 1932. Defendants were provided notice of these issues by numerous complaints filed
 15 against them, including the instant Complaint, within a reasonable amount of time.

16 1933. As a direct and proximate result of Defendants' breach of express warranties, New
 17 Jersey State Class members have been damaged in an amount to be determined at trial.

18 **NEW JERSEY COUNT III:**
 19 **Breach of Implied Warranty of Merchantability**
 20 **N.J.S. 12A:2-314 and 2A-212**
(On Behalf of the New Jersey State Class)

21 1934. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 22 paragraphs as though fully set forth herein.

23 1935. Plaintiff Raghu Katta (for the purpose of this count, "Plaintiff") brings this count
 24 on behalf of himself and the New Jersey State Class against the Volkswagen and Audi
 25 Defendants (collectively for this count, "Defendants").

26 1936. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 27 vehicles under N.J.S. 12A:2-104(1) and "sellers" of motor vehicles under 2-103(1)(d).
 28

1937. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under N.J.S. 12A:2A-103(1)(p).

1938. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.J.S. 12A:2-105(1) and 2A-103(1)(h).

1939. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to N.J.S. 12A:2-314 and 2A-212.

1940. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

1941. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1942. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, New Jersey State Class members have been damaged in an amount to be proven at trial.

**NEW MEXICO COUNT I:
Violations of the New Mexico Unfair Trade Practices Act
N.M. Stat. Ann. § 57-12-1 *et seq.*
(On Behalf of the New Mexico State Class)**

1943. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.

1944. Plaintiff Geert Wenes (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the New Mexico State Class against all Defendants.

1945. Defendants, Plaintiff, and New Mexico State Class members are “person[s]” under the New Mexico Unfair Trade Practices Act (“New Mexico UTPA”), N.M. Stat. Ann. § 57-12-2.

1 1946. Defendants’ actions as set forth herein occurred in the conduct of trade or
2 commerce as defined under N.M. Stat. Ann. § 57-12-2.

3 1947. The New Mexico UTPA makes unlawful “a false or misleading oral or written
4 statement, visual description or other representation of any kind knowingly made in connection
5 with the sale, lease, rental or loan of goods or services . . . by a person in the regular course of the
6 person’s trade or commerce, that may, tends to or does deceive or mislead any person,” including
7 but not limited to “failing to state a material fact if doing so deceives or tends to deceive.” N.M.
8 Stat. Ann. § 57-12-2(D). Defendants’ acts and omissions described herein constitute unfair or
9 deceptive acts or practices under N.M. Stat. Ann. § 57-12-2(D). In addition, Defendants’ actions
10 constitute unconscionable actions under N.M. Stat. Ann. § 57-12-2(E), since they took advantage
11 of the lack of knowledge, ability, experience, and capacity of the New Mexico State Class
12 members to a grossly unfair degree.

13 1948. In the course of its business, Defendants concealed and suppressed material facts
14 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
15 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
16 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
17 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
18 testing by way of deliberately induced false readings.

19 1949. New Mexico State Class members had no way of discerning that Defendants’
20 representations were false and misleading because Defendants’ defeat device software was
21 extremely sophisticated technology. Plaintiff and New Mexico State Class members did not and
22 could not unravel Defendants’ deception on their own.

23 1950. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
24 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
25 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
26 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
27 a transaction involving Class Vehicles has been supplied in accordance with a previous
28 representation when it has not.

1 1951. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
7 New Mexico UTPA.

8 1952. Defendants intentionally and knowingly misrepresented material facts regarding
9 the Class Vehicles with intent to mislead Plaintiff and the New Mexico State Class.

10 1953. Defendants knew or should have known that their conduct violated the New
11 Mexico UTPA.

12 1954. Defendants owed Plaintiff and the New Mexico State Class a duty to disclose the
13 illegality, public health and safety risks, the true nature of the Class Vehicles, because
14 Defendants:

15 A. possessed exclusive knowledge that they were manufacturing, selling, and
16 distributing vehicles throughout the United States that did not comply with regulations;

17 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
18 Class members; and/or

19 C. made incomplete representations about the Class Vehicles generally, and
20 the use of the defeat device in particular, while purposefully withholding material facts from
21 Plaintiff and/or Class members that contradicted these representations.

22 1955. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
23 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
24 Plaintiff and the New Mexico State Class.

25 1956. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
26 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
27 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
28 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

1 1957. Defendants' violations present a continuing risk to Plaintiff, the New Mexico State
2 Class, as well as to the general public. Defendants' unlawful acts and practices complained of
3 herein affect the public interest.

4 1958. Plaintiff and the New Mexico State Class suffered ascertainable loss and actual
5 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
6 of and failure to disclose material information. Plaintiff and the New Mexico State Class
7 members who purchased or leased the Class Vehicles would not have purchased or leased them at
8 all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles
9 rendered legal to sell—would have paid significantly less for them. Plaintiff and the New Mexico
10 State Class also suffered diminished value of their vehicles, as well as lost or diminished use.
11 Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive
12 practices under the New Mexico UTPA. All owners of Class Vehicles suffered ascertainable loss
13 in the form of the diminished value of their vehicles as a result of Defendants' deceptive and
14 unfair acts and practices made in the course of Defendants' business.

15 1959. As a direct and proximate result of Defendants' violations of the New Mexico
16 UTPA, Plaintiff and the New Mexico State Class have suffered injury-in-fact and/or actual
17 damage.

18 1960. Because Defendants' unconscionable, willful conduct caused actual harm to New
19 Mexico State Class members, the New Mexico State Class seeks recovery of actual damages or
20 \$100, whichever is greater, discretionary treble damages, punitive damages, and reasonable
21 attorneys' fees and costs, as well as all other proper and just relief available under N.M. Stat.
22 Ann. § 57-12-10.

23 1961. Plaintiff and the New Mexico State Class members also seek punitive damages
24 against Defendants because Defendants' conduct was malicious, willful, reckless, wanton,
25 fraudulent and in bad faith.

**NEW MEXICO COUNT II:
Breach of Express Warranty
N.M. Stat. §§ 55-2-313 and 55-2A-210
(On Behalf of the New Mexico State Class)**

1962. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1963. Plaintiff Geert Wenes (for the purpose of this count, “Plaintiff”) brings this count on behalf of himself and the New Mexico State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

1964. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under N.M. Stat. § 55-2-104(1) and “sellers” of motor vehicles under § 55-2-103(1)(d).

1965. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under N.M. Stat. § 55-2A-103(1)(p).

1966. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.M. Stat. §§ 55-2-105(1) and 55-2A-103(1)(h).

1967. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

1968. Defendants also made numerous representations, descriptions, and promises to Plaintiff and New Mexico State Class members regarding the performance and emission controls of their vehicles.

1969. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

1970. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

1971. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

1972. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1973. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 1974. Defendants' warranties formed a basis of the bargain that was reached when New
6 Mexico State Class members purchased or leased Class Vehicles that are equipped with a defeat
7 device and non-compliant emission systems.

8 1975. Despite the existence of warranties, Defendants failed to inform New Mexico State
9 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 1976. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1977. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1978. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make New Mexico State Class members whole and because Defendants have
20 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

21 1979. Accordingly, recovery by the New Mexico State Class members is not restricted to
22 the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 1980. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. New Mexico State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 1981. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 2 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
 3 and workmanship as many incidental and consequential damages have already been suffered
 4 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
 5 continued failure to provide such limited remedy within a reasonable time, and any limitation on
 6 the New Mexico State Class members' remedies would be insufficient to make them whole.

7 1982. Finally, because of Defendants' breach of warranty as set forth herein, New
 8 Mexico State Class members assert, as additional and/or alternative remedies, the revocation of
 9 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 10 currently owned or leased, and for such other incidental and consequential damages as allowed.

11 1983. Defendants were provided notice of these issues by numerous complaints filed
 12 against them, including the instant Complaint, within a reasonable amount of time.

13 1984. As a direct and proximate result of Defendants' breach of express warranties, New
 14 Mexico State Class members have been damaged in an amount to be determined at trial.

15 **NEW MEXICO COUNT III:**
 16 **Breach of Implied Warranty of Merchantability**
 17 **N.M. Stat. §§ 55-2-314 and 55-2A-212**
(On Behalf of the New Mexico State Class)

18 1985. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 19 paragraphs as though fully set forth herein.

20 1986. Plaintiff Geert Wenes (for the purpose of this count, "Plaintiff") brings this count
 21 on behalf of himself and the New Mexico State Class against the Volkswagen and Audi
 22 Defendants (collectively for this count, "Defendants").

23 1987. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 24 vehicles under N.M. Stat. § 55-2-104(1) and "sellers" of motor vehicles under § 55-2-103(1)(d).

25 1988. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 26 of motor vehicles under N.M. Stat. § 55-2A-103(1)(p).

27 1989. The Class Vehicles are and were at all relevant times "goods" within the meaning
 28 of N.M. Stat. §§ 55-2-105(1) and 55-2A-103(1)(h).

1 1990. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to N.M. Stat. §§ 55-2-
3 314 and 55-2A-212.

4 1991. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
7 device and do not comply with federal and state emissions standards, rendering certain emissions
8 functions inoperative.

9 1992. Defendants were provided notice of these issues by the investigations of the EPA
10 and California state regulators, and numerous complaints filed against it including the instant
11 complaint, within a reasonable amount of time.

12 1993. As a direct and proximate result of Defendants' breach of the implied warranty of
13 merchantability, New Mexico State Class members have been damaged in an amount to be
14 proven at trial.

15 **NEW YORK COUNT I:**
16 **Violations of the New York General Business Law § 349**
17 **N.Y. Gen. Bus. Law § 349**
 (On Behalf of the New York State Class)

18 1994. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
19 set forth herein.

20 1995. Plaintiffs Michael Beck and Ira Bernstein (for the purpose of this count,
21 "Plaintiffs") bring this count on behalf of themselves and the New York State Class against all
22 Defendants.

23 1996. Plaintiffs, the New York State Class members and Defendants are "persons" under
24 N.Y. Gen. Bus. Law § 349(h), the New York Deceptive Acts and Practices Act ("NY DAPA").

25 1997. Defendants' actions as set forth herein occurred in the conduct of trade or
26 commerce under the NY DAPA.

1 1998. The NY DAPA makes unlawful “[d]eceptive acts or practices in the conduct of
2 any business, trade or commerce.” N.Y. Gen. Bus. Law § 349. Defendants’ conduct, as set forth
3 herein, constitutes deceptive acts or practices under this section.

4 1999. In the course of its business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
6 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
7 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
8 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
9 testing by way of deliberately induced false readings.

10 2000. New York State Class members had no way of discerning that Defendants’
11 representations were false and misleading because Defendants’ defeat device software was
12 extremely sophisticated technology. Plaintiffs and New York State Class members did not and
13 could not unravel Defendants’ deception on their own.

14 2001. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
18 a transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 2002. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
26 NY DAPA.

27 2003. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiffs and the New York State Class.

1 2004. Defendants knew or should have known that their conduct violated the NY DAPA.

2 2005. Defendants owed Plaintiffs and the New York State Class a duty to disclose the
3 illegality, public health and safety risks, the true nature of the Class Vehicles, because
4 Defendants:

5 A. possessed exclusive knowledge that they were manufacturing, selling, and
6 distributing vehicles throughout the United States that did not comply with regulations;

7 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
8 Class members; and/or

9 C. made incomplete representations about the Class Vehicles generally, and
10 the use of the defeat device in particular, while purposefully withholding material facts from
11 Plaintiffs that contradicted these representations.

12 2006. Defendants' fraudulent use of the "defeat device" and its concealment of the true
13 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
14 Plaintiffs and the New York State Class.

15 2007. Defendants' unfair or deceptive acts or practices were likely to and did in fact
16 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
17 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
18 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

19 2008. Defendants' violations present a continuing risk to Plaintiffs as well as to the
20 general public. Defendants' unlawful acts and practices complained of herein affect the public
21 interest.

22 2009. Plaintiffs and the New York State Class suffered ascertainable loss and actual
23 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
24 of and failure to disclose material information. Plaintiffs and the New York State Class members
25 who purchased or leased the Class Vehicles would not have purchased or leased them at all
26 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
27 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
28 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all

1 their customers to refrain from unfair and deceptive practices under the NY DAPA. All owners of
 2 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
 3 a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants'
 4 business.

5 2010. As a direct and proximate result of Defendants' violations of the NY DAPA,
 6 Plaintiffs and the New York State Class have suffered injury-in-fact and/or actual damage.

7 2011. As a result of the foregoing willful, knowing, and wrongful conduct of Defendants,
 8 Plaintiffs and the New York State Class have been damaged in an amount to be proven at trial,
 9 and seek all just and proper remedies, including but not limited to actual damages or \$50,
 10 whichever is greater, treble damages up to \$1,000, punitive damages to the extent available under
 11 the law, reasonable attorneys' fees and costs, an order enjoining Defendants' deceptive and unfair
 12 conduct, and all other just and appropriate relief available under the NY DAPA.

13 **NEW YORK COUNT II:**
 14 **Violations of the New York General Business Law § 350**
 15 **N.Y. Gen. Bus. Law § 350**
 16 **(On Behalf of the New York State Class)**

17 2012. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
 18 set forth herein.

19 2013. Plaintiffs Michael Beck and Ira Bernstein (for the purpose of this count,
 20 "Plaintiffs") bring this count on behalf of themselves and the New York State Class against the
 21 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

22 2014. Defendants were engaged in the "conduct of business, trade or commerce," within
 23 the meaning of N.Y. Gen. Bus. Law § 350, the New York False Advertising Act ("NY FAA")

24 2015. The NY FAA makes unlawful "[f]alse advertising in the conduct of any business,
 25 trade or commerce." N.Y. Gen. Bus. Law § 350. False advertising includes "advertising,
 26 including labeling, of a commodity . . . if such advertising is misleading in a material respect,"
 27 taking into account "the extent to which the advertising fails to reveal facts material in light of ...
 28 representations [made] with respect to the commodity" N.Y. Gen. Bus. Law § 350-a.

1 2016. Defendants caused to be made or disseminated through New York, through
2 advertising, marketing, and other publications, statements and omissions that were untrue or
3 misleading, and that were known by Defendants, or that through the exercise of reasonable care
4 should have been known by Defendants, to be untrue and misleading to Plaintiffs and the New
5 York State Class.

6 2017. Defendants made numerous material misrepresentations and omissions of fact with
7 intent to mislead and deceive concerning the Class Vehicles, particularly concerning the
8 illegality, efficacy and functioning of the emissions systems on the Class Vehicles. Specifically,
9 Defendants intentionally concealed and suppressed material facts concerning the legality and
10 quality of the Class Vehicles in order to intentionally and grossly defraud and mislead the
11 Plaintiffs and the New York State Class concerning the true emissions produced by the Class
12 Vehicles.

13 2018. The misrepresentations and omissions regarding set forth above were material and
14 likely to deceive a reasonable consumer. Specifically, the Class Vehicles used a sophisticated
15 defeat device that was undetectable to the ordinary consumer that made them non-compliant with
16 EPA emission regulations.

17 2019. Defendants intentionally and knowingly misrepresented material facts regarding
18 the Class Vehicles with intent to mislead Plaintiffs and the New York State Class.

19 2020. Defendants false advertising was likely to and did in fact deceive regulators and
20 reasonable consumers, including Plaintiffs and New York State Class members, about the
21 illegality and true characteristics of the Class Vehicles, the quality of Defendants brand and the
22 true value of the Class Vehicles.

23 2021. Defendants violations of the NY FAA present a continuing risk to Plaintiffs and to
24 the general public. Defendants' deceptive acts and practices affect the public interest.

25 2022. The Class Vehicles do not perform as advertised and are not compliant with EPA
26 regulations, making them far less valuable than advertised.

27 2023. Plaintiffs and New York State Class members who purchased Class Vehicles
28 either would not have purchased them at all or paid less but for Defendants false advertising in

1 violation of the NY FAA. Plaintiffs and New York State Class members who leased Class
 2 Vehicles either would not have leased them at all, or at a lower rate but for Defendants' false
 3 advertising in violation of the NY FAA.

4 2024. The Plaintiffs and the New York State Class have suffered injury-in-fact and/or
 5 actual damages and ascertainable loss as a direct and proximate result of the Defendant's false
 6 advertising in violation of the NY FAA, including but not limited to purchasing or leasing an
 7 illegal vehicle, diminished or complete lost value for the Class Vehicles they purchased or leased;
 8 lost or diminished use, enjoyment and utility of such vehicles; and annoyance, aggravation and
 9 inconvenience resulting from Defendants' violations of the NY FAA.

10 2025. Plaintiffs and the New York State Class seek monetary relief against Defendants
 11 measured as the greater of (a) actual damages in an amount to be determined at trial, and (b)
 12 statutory damages in the amount of \$500 each for New York State Class members. Because
 13 Defendants' conduct was committed willingly and knowingly, New York State Class members
 14 are entitled to recover three times actual damages, up to \$10,000.

15 2026. The New York State Class also seeks an order enjoining Defendants' false
 16 advertising, attorneys' fees, and any other just and proper relief under N.Y. Gen. Bus. Law § 350.

17 **NEW YORK COUNT III:**
 18 **Breach of Express Warranty**
 19 **N.Y. U.C.C. Law §§ 2-313 and 2A-210**
 20 **(On Behalf of the New York State Class)**

21 2027. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 22 fully set forth herein.

23 2028. Plaintiffs Michael Beck and Ira Bernstein (for the purpose of this count,
 24 "Plaintiffs") bring this count on behalf of themselves and the New York State Class against the
 25 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

26 2029. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 27 vehicles under N.Y. UCC Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).

28 2030. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 of motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

1 2031. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

3 2032. In connection with the purchase or lease of each one of its new vehicles,
4 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
5 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
6 materials or workmanship.”

7 2033. Defendants also made numerous representations, descriptions, and promises to
8 Plaintiffs and New York State Class members regarding the performance and emission controls of
9 their vehicles.

10 2034. For example, as shown below, Defendants included in the warranty booklets for
11 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
12 so as to conform at the time of sale with all applicable regulations of the United States
13 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

23 2035. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
24 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
25 Warranty.”

26 2036. The EPA requires vehicle manufacturers to provide a Performance Warranty with
27 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
28 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty

1 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
2 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
3 emission control components are covered for the first eight years or 80,000 miles (whichever
4 comes first). These major emission control components subject to the longer warranty include the
5 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
6 device or computer.

7 2037. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
8 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
9 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
10 Design and Defect Warranty required by the EPA covers repair of emission control or emission
11 related parts, which fail to function or function improperly because of a defect in materials or
12 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
13 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
14 comes first.

15 2038. As manufacturers of light-duty vehicles, Defendants were required to provide
16 these warranties to purchasers or lessees of Class Vehicles.

17 2039. Defendants' warranties formed a basis of the bargain that was reached when New
18 York State Class members purchased or leased Class Vehicles that are equipped with a defeat
19 device and non-compliant emission systems.

20 2040. Despite the existence of warranties, Defendants failed to inform New York State
21 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
22 compliance with applicable state and federal emissions laws, and failed to fix the defective
23 emission components free of charge.

24 2041. Defendants breached the express warranty promising to repair and correct
25 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
26 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

27 2042. Affording Defendants a reasonable opportunity to cure their breach of written
28 warranties would be unnecessary and futile here.

1 2043. Furthermore, the limited warranty promising to repair and correct Defendants’
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy
3 is insufficient to make New York State Class members whole and because Defendants have failed
4 and/or have refused to adequately provide the promised remedies within a reasonable time.

5 2044. Accordingly, recovery by the New York State Class members is not restricted to
6 the limited warranty promising to repair and correct Defendants’ defect in materials and
7 workmanship, and they seek all remedies as allowed by law.

8 2045. Also, as alleged in more detail herein, at the time Defendants warranted and sold
9 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
10 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
11 material facts regarding the Class Vehicles. New York State Class members were therefore
12 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

13 2046. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of repairing and correcting Defendants’ defect in materials
15 and workmanship as many incidental and consequential damages have already been suffered
16 because of Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or
17 continued failure to provide such limited remedy within a reasonable time, and any limitation on
18 the New York State Class members’ remedies would be insufficient to make them whole.

19 2047. Finally, because of Defendants’ breach of warranty as set forth herein, New York
20 State Class members assert, as additional and/or alternative remedies, the revocation of
21 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
22 currently owned or leased, and for such other incidental and consequential damages as allowed.

23 2048. Defendants were provided notice of these issues by numerous complaints filed
24 against them, including the instant Complaint, within a reasonable amount of time.

25 2049. As a direct and proximate result of Defendants’ breach of express warranties, New
26 York State Class members have been damaged in an amount to be determined at trial.

**NEW YORK COUNT IV:
Breach of Implied Warranty of Merchantability
N.Y. U.C.C. Law §§ 2-314 and 2A-212
(On Behalf of the New York State Class)**

2050. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2051. Plaintiffs Michael Beck and Ira Bernstein (for the purpose of this count, “Plaintiffs”) bring this count on behalf of themselves and the New York State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2052. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under N.Y. UCC Law § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).

2053. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

2054. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

2055. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to N.Y. UCC Law §§ 2-314 and 2A-212.

2056. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2057. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2058. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, New York State Class members have been damaged in an amount to be proven at trial.

**NORTH CAROLINA COUNT I:
Violations of the North Carolina Unfair and Deceptive Acts and Practices Act
N.C. Gen. Stat. § 75-1.1 *et seq.*
(On Behalf of the North Carolina State Class)**

2059. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2060. This count is brought on behalf of the North Carolina State Class against all Defendants.

2061. Plaintiffs and the North Carolina State Class members are persons under the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.* (“NCUDTPA”).

2062. Defendants’ acts and practices complained of herein were performed in the course of Defendants’ trade or business and thus occurred in or affected “commerce,” as defined in N.C. Gen. Stat. § 75-1.1(b).

2063. The NCUDTPA makes unlawful “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]” The NCUDTPA provides a private right of action for any person injured “by reason of any act or thing done by any other person, firm or corporation in violation of” the NCUDTPA. N.C. Gen. Stat. § 75-16.

2064. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

2065. North Carolina State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and North Carolina State Class members did not and could not unravel Defendants’ deception on their own.

1 2066. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
5 a transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 2067. The Clean Air Act and EPA regulations require that automobiles limit their
8 emissions output to specified levels. These laws are intended for the protection of public health
9 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
10 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
11 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
12 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
13 NCUDTPA.

14 2068. Defendants intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiffs and the North Carolina State Class.

16 2069. Defendants knew or should have known that their conduct violated the
17 NCUDTPA.

18 2070. Defendants owed Plaintiffs and the North Carolina State Class a duty to disclose
19 the illegality, public health and safety risks, the true nature of the Class Vehicles, because
20 Defendants:

21 A. possessed exclusive knowledge that they were manufacturing, selling, and
22 distributing vehicles throughout the United States that did not comply with regulations;

23 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
24 Class members; and/or

25 C. made incomplete representations about the Class Vehicles generally, and
26 the use of the defeat device in particular, while purposefully withholding material facts from
27 Plaintiffs that contradicted these representations.
28

1 2071. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
3 Plaintiffs and the North Carolina State Class.

4 2072. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
7 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

8 2073. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
9 general public. Defendants’ unlawful acts and practices complained of herein affect the public
10 interest.

11 2074. Plaintiffs and the North Carolina State Class suffered ascertainable loss and actual
12 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
13 of and failure to disclose material information. Plaintiffs and the North Carolina State Class
14 members who purchased or leased the Class Vehicles would not have purchased or leased them at
15 all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles
16 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered
17 diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing
18 duty to all their customers to refrain from unfair and deceptive practices under the NCUDTPA.
19 All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of
20 their vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the
21 course of Defendants’ business.

22 2075. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the
23 North Carolina State Class have been damaged in an amount to be proven at trial, and seek all just
24 and proper remedies, including but not limited to treble damages, an order enjoining Defendants’
25 deceptive and unfair conduct, court costs and reasonable attorneys’ fees, and any other just and
26 proper relief available under N.C. Gen. Stat. § 75-16.

**NORTH CAROLINA COUNT II:
Breach of Express Warranty
N.C.G.S.A. §§ 25-2-313 and 252A-210
(On Behalf of the North Carolina State Class)**

2076. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2077. This count is brought on behalf of the North Carolina State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2078. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under N.C.G.S.A. § 25-2-104(1) and “sellers” of motor vehicles under § 25-2-103(1)(d).

2079. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under N.C.G.S.A. § 25-2A-103(1)(p).

2080. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.C.G.S.A. § 25-2-105(1) and N.C.G.S.A. § 25-2A-103(1)(h).

2081. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2082. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and North Carolina State Class members regarding the performance and emission controls of their vehicles.

2083. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2084. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

2085. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

2086. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2087. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 2088. Defendants' warranties formed a basis of the bargain that was reached when North
6 Carolina State Class members purchased or leased Class Vehicles that are equipped with a defeat
7 device and non-compliant emission systems.

8 2089. Despite the existence of warranties, Defendants failed to inform North Carolina
9 State Class members that the Class Vehicles were intentionally designed and manufactured to be
10 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 2090. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2091. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2092. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make North Carolina State Class members whole and because Defendants have
20 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2093. Accordingly, recovery by the North Carolina State Class members is not restricted
22 to the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 2094. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. North Carolina State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2095. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the North Carolina State Class members' remedies would be insufficient to make them whole.

2096. Finally, because of Defendants' breach of warranty as set forth herein, North Carolina State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

2097. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2098. As a direct and proximate result of Defendants' breach of express warranties, North Carolina State Class members have been damaged in an amount to be determined at trial.

**NORTH CAROLINA COUNT III:
Breach of Implied Warranty of Merchantability
N.C.G.S.A. §§ 25-2-314 and 252A-212
(On Behalf of the North Carolina State Class)**

2099. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2100. This count is brought on behalf of the North Carolina State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2101. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under N.C.G.S.A. § 25-2-104(1) and "sellers" of motor vehicles under § 25-2-103(1)(d).

2102. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under N.C.G.S.A. § 25-2A-103(1)(p).

2103. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.C.G.S.A. § 25-2-105(1) and N.C.G.S.A. § 25-2A-103(1)(h).

1 2104. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to N.C.G.S.A. § 25-2-
3 314 and N.C.G.S.A. § 25-2A-212.

4 2105. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
7 device and do not comply with federal and state emissions standards, rendering certain emissions
8 functions inoperative.

9 2106. Defendants were provided notice of these issues by the investigations of the EPA
10 and California state regulators, and numerous complaints filed against it including the instant
11 complaint, within a reasonable amount of time.

12 2107. As a direct and proximate result of Defendants' breach of the implied warranty of
13 merchantability, North Carolina State Class members have been damaged in an amount to be
14 proven at trial.

15 **NORTH DAKOTA COUNT I:**
16 **Violations of the North Dakota Consumer Fraud Act**
17 **N.D. Cent. Code § 51-15-02**
 (On Behalf of the North Dakota State Class)

18 2108. Plaintiffs incorporate by reference each preceding paragraph as though fully set
19 forth herein.

20 2109. This count is brought on behalf of the North Dakota State Class against all
21 Defendants.

22 2110. Plaintiffs, the North Dakota State Class members, and Defendants are "persons"
23 within the meaning of N.D. Cent. Code § 51-15-02(4).

24 2111. Defendants engaged in the "sale" of "merchandise" within the meaning of N.D.
25 Cent Code § 51-15-02(3), (5).

26 2112. The North Dakota Consumer Fraud Act ("North Dakota CFA") makes unlawful
27 "[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false
28 pretense, false promise, or misrepresentation, with the intent that others rely thereon in

1 connection with the sale or advertisement of any merchandise....” N.D. Cent. Code § 51-15-02.
2 As set forth above and below, Defendants committed deceptive acts or practices, with the intent
3 that North Dakota State Class members rely thereon in connection with their purchase or lease of
4 the Class Vehicles.

5 2113. In the course of its business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
7 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
8 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
9 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
10 testing by way of deliberately induced false readings.

11 2114. North Dakota State Class members had no way of discerning that Defendants’
12 representations were false and misleading because Defendants’ defeat device software was
13 extremely sophisticated technology. Plaintiffs and North Dakota State Class members did not and
14 could not unravel Defendants’ deception on their own.

15 2115. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
16 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
17 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
18 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
19 a transaction involving Class Vehicles has been supplied in accordance with a previous
20 representation when it has not.

21 2116. The Clean Air Act and EPA regulations require that automobiles limit their
22 emissions output to specified levels. These laws are intended for the protection of public health
23 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
24 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
25 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
26 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
27 North Dakota CFA.
28

1 2117. Defendants intentionally and knowingly misrepresented material facts regarding
2 the Class Vehicles with intent to mislead Plaintiffs and the North Dakota State Class.

3 2118. Defendants knew or should have known that their conduct violated the North
4 Dakota CFA.

5 2119. Defendants owed Plaintiffs and the North Dakota State Class a duty to disclose the
6 illegality, public health and safety risks, the true nature of the Class Vehicles, because
7 Defendants:

8 A. possessed exclusive knowledge that they were manufacturing, selling, and
9 distributing vehicles throughout the United States that did not comply with regulations;

10 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
11 Class members; and/or

12 C. made incomplete representations about the Class Vehicles generally, and
13 the use of the defeat device in particular, while purposefully withholding material facts from
14 Plaintiffs that contradicted these representations.

15 2120. Defendants' fraudulent use of the "defeat device" and its concealment of the true
16 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
17 Plaintiffs and the North Dakota State Class.

18 2121. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
20 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
21 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

22 2122. Defendants' violations present a continuing risk to Plaintiffs as well as to the
23 general public. Defendants' unlawful acts and practices complained of herein affect the public
24 interest.

25 2123. Plaintiffs and the North Dakota State Class suffered ascertainable loss and actual
26 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
27 of and failure to disclose material information. Plaintiffs and the North Dakota State Class
28 members who purchased or leased the Class Vehicles would not have purchased or leased them at

1 all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles
 2 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered
 3 diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing
 4 duty to all their customers to refrain from unfair and deceptive practices under the North Dakota
 5 CFA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value
 6 of their vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the
 7 course of Defendants’ business.

8 2124. As a direct and proximate result of Defendants’ violations of the North Dakota
 9 CFA, Plaintiffs and the North Dakota State Class have suffered injury-in-fact and/or actual
 10 damage.

11 2125. North Dakota State Class members seek punitive damages against Defendants
 12 because Defendants’ conduct was egregious. Defendants’ egregious conduct warrants punitive
 13 damages.

14 2126. Further, Defendants knowingly committed the conduct described above, and thus,
 15 under N.D. Cent. Code § 51-15-09, Defendants are liable to Plaintiffs and the North Dakota State
 16 Class for treble damages in amounts to be proven at trial, as well as attorneys’ fees, costs, and
 17 disbursements. Plaintiffs further seek an order enjoining Defendants’ unfair and/or deceptive acts
 18 or practices, and other just and proper available relief under the North Dakota CFA.

19 **NORTH DAKOTA COUNT II:**
 20 **Breach of Express Warranty**
 21 **N.D. Cent. Code §§ 41-02-30 and 41-02.1-19**
(On Behalf of the North Dakota State Class)

22 2127. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 23 fully set forth herein.

24 2128. This count is brought on behalf of the North Dakota State Class against the
 25 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

26 2129. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 27 vehicles under N.D. Cent. Code § 41-02.04(3) and “sellers” of motor vehicles under § 41-02-
 28 03(1)(d).

2130. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under N.D. Cent. Code § 41-02.1-03(1)(p).

2131. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.D. Cent. Code § 41-02-05(2) and N.D. Cent. Code § 41-02.1-03(1)(h).

2132. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2133. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and North Dakota State Class members regarding the performance and emission controls of their vehicles.

2134. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2135. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1 2136. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 2137. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 2138. As manufacturers of light-duty vehicles, Defendants were required to provide
19 these warranties to purchasers or lessees of Class Vehicles.

20 2139. Defendants' warranties formed a basis of the bargain that was reached when North
21 Dakota State Class members purchased or leased Class Vehicles that are equipped with a defeat
22 device and non-compliant emission systems.

23 2140. Despite the existence of warranties, Defendants failed to inform North Dakota
24 State Class members that the Class Vehicles were intentionally designed and manufactured to be
25 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
26 emission components free of charge.

1 2141. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 2142. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 2143. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy
8 is insufficient to make North Dakota State Class members whole and because Defendants have
9 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

10 2144. Accordingly, recovery by the North Dakota State Class members is not restricted
11 to the limited warranty promising to repair and correct Defendants' defect in materials and
12 workmanship, and they seek all remedies as allowed by law.

13 2145. Also, as alleged in more detail herein, at the time Defendants warranted and sold
14 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
15 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. North Dakota State Class members were therefore
17 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 2146. Moreover, many of the injuries flowing from the Class Vehicles cannot be
19 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
20 and workmanship as many incidental and consequential damages have already been suffered
21 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
22 continued failure to provide such limited remedy within a reasonable time, and any limitation on
23 the North Dakota State Class members' remedies would be insufficient to make them whole.

24 2147. Finally, because of Defendants' breach of warranty as set forth herein, North
25 Dakota State Class members assert, as additional and/or alternative remedies, the revocation of
26 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
27 currently owned or leased, and for such other incidental and consequential damages as allowed.
28

2148. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2149. As a direct and proximate result of Defendants' breach of express warranties, North Dakota State Class members have been damaged in an amount to be determined at trial.

**NORTH DAKOTA COUNT III:
Breach of Implied Warranty of Merchantability
N.D. Cent. Code §§ 41-02-31 and 41-02.1-21
(On Behalf of the North Dakota State Class)**

2150. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2151. This count is brought on behalf of the North Dakota State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2152. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under N.D. Cent. Code § 41-02.04(3) and "sellers" of motor vehicles under § 41-02-03(1)(d).

2153. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under N.D. Cent. Code § 41-02.1-03(1)(p).

2154. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.D. Cent. Code § 41-02-05(2) and N.D. Cent. Code § 41-02.1-03(1)(h).

2155. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to N.D. Cent. Code § 41-02-31 and N.D. Cent. Code § 41-02.1-21.

2156. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2157. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2158. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, North Dakota State Class members have been damaged in an amount to be proven at trial.

**OHIO COUNT I:
Violations of the Ohio Consumer Sales Practices Act
Ohio Rev. Code § 1345.01 *et seq.*
(On Behalf of the Ohio State Class)**

2159. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2160. This count is brought on behalf of the Ohio State Class against all Defendants.

2161. Defendants, Plaintiffs and the Ohio State Class members are "persons" within the meaning of Ohio Rev. Code § 1345.01(B). Defendants are a "supplier" as defined by Ohio Rev. Code § 1345.01(C).

2162. Plaintiffs and the Ohio State Class are "consumers" as that term is defined in Ohio Rev. Code § 1345.01(D), and their purchase and leases of the Class Vehicles with the Defect Devices installed in them are "consumer transactions" within the meaning of Ohio Rev. Code § 1345.01(A).

2163. Ohio Rev. Code § 1345.02, prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Ohio CSPA prohibits a supplier from (i) representing that goods have characteristics, uses or benefits which the goods do not have; (ii) representing that their goods are of a particular quality or grade that the product is not; and (iii) representing that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not.

2164. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during

1 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
2 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
3 testing by way of deliberately induced false readings.

4 2165. Ohio State Class members had no way of discerning that Defendants’
5 representations were false and misleading because Defendants’ defeat device software was
6 extremely sophisticated technology. Plaintiffs and Ohio State Class members did not and could
7 not unravel Defendants’ deception on their own.

8 2166. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
9 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
10 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
11 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
12 a transaction involving Class Vehicles has been supplied in accordance with a previous
13 representation when it has not.

14 2167. The Clean Air Act and EPA regulations require that automobiles limit their
15 emissions output to specified levels. These laws are intended for the protection of public health
16 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
17 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
18 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
19 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
20 Ohio CSPA.

21 2168. Defendants intentionally and knowingly misrepresented material facts regarding
22 the Class Vehicles with intent to mislead Plaintiffs and the Ohio State Class.

23 2169. Defendants knew or should have known that their conduct violated the Ohio
24 CSPA.

25 2170. The Ohio Attorney General has made available for public inspection prior state
26 court decisions which have held that the acts and omissions of Defendants in this Complaint,
27 including, but not limited to, the failure to honor both implied warranties and express warranties,
28 the making and distribution of false, deceptive, and/or misleading representations, and the

concealment and/or non-disclosure of a substantial defect, constitute deceptive sales practices in violation of the CSPA. These cases include, but are not limited to, the following:

- A. Mason v. Mercedes Benz USA, LLC (OPIF #10002382);
 - B. State ex rel. Betty D. Montgomery v. Ford Motor Co. (OPIF #10002123);
 - C. State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc. (OPIF #10002025);
 - D. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
 - E. *Borror v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);
 - F. State ex rel. Jim Petro v. Craftmatic Organization, Inc. (OPIF #10002347);
 - G. Cranford v. Joseph Airport Toyota, Inc. (OPIF #10001586);
 - H. *Brown v. Spears* (OPIF #10000403);
 - I. Brinkman v. Mazda Motor of America, Inc. (OPIF #10001427);
 - J. Mosley v. Performance Mitsubishi aka Automanage (OPIF #10001326);
- and
- K. Walls v. Harry Williams dba Butch's Auto Sales (OPIF #10001524).

2171. Defendants owed Plaintiffs and the Ohio State Class a duty to disclose the illegality, public health and safety risks, the true nature of the Class Vehicles, because Defendants:

- A. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with regulations;
- B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or Class members; and/or
- C. made incomplete representations about the Class Vehicles generally, and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1 2172. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
3 Plaintiffs and the Ohio State Class.

4 2173. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
7 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

8 2174. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
9 general public. Defendants’ unlawful acts and practices complained of herein affect the public
10 interest.

11 2175. Plaintiffs and the Ohio State Class suffered ascertainable loss and actual damages
12 as a direct and proximate result of Defendants’ misrepresentations and its concealment of and
13 failure to disclose material information. Plaintiffs and the Ohio State Class members who
14 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
15 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
16 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
17 their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their
18 customers to refrain from unfair and deceptive practices under the Ohio CSPA. All owners of
19 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
20 a result of Defendants’ deceptive and unfair acts and practices made in the course of Defendants’
21 business.

22 2176. Pursuant to Ohio Rev. Code § 1345.09, Plaintiffs and the Ohio State Class seek an
23 order enjoining Defendants’ unfair and/or deceptive acts or practices, actual damages - trebled,
24 and attorneys’ fees, costs, and any other just and proper relief, to the extend available under the
25 Ohio CSPA.

OHIO COUNT II:
Violations of the Ohio Deceptive Trade Practices Act
Ohio Rev. Code § 4165.01 *et seq.*
(On Behalf of the Ohio State Class)

2177. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2178. This count is brought on behalf of the Ohio State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2179. Defendants, Plaintiffs and the Ohio State Class are “persons” within the meaning of Ohio Rev. Code § 4165.01(D).

2180. Defendants engaged in “the course of [its] business” within the meaning of Ohio Rev. Code § 4165.02(A) with respect to the acts alleged herein.

2181. The Ohio Deceptive Trade Practices Act, Ohio Rev. Code § 4165.02(A) (“Ohio DTPA”) provides that a “person engages in a deceptive trade practice when, in the course of the person’s business, vocation, or occupation,” the person does any of the following: “(2) Causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services; ... (7) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; ... (9) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; ... [or] (11) Advertises goods or services with intent not to sell them as advertised.”

2182. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

1 2183. Ohio State Class members had no way of discerning that Defendants’
2 representations were false and misleading because Defendants’ defeat device software was
3 extremely sophisticated technology. Plaintiffs and Ohio State Class members did not and could
4 not unravel Defendants’ deception on their own.

5 2184. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
6 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
7 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
8 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
9 a transaction involving Class Vehicles has been supplied in accordance with a previous
10 representation when it has not.

11 2185. The Clean Air Act and EPA regulations require that automobiles limit their
12 emissions output to specified levels. These laws are intended for the protection of public health
13 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
14 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
15 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
16 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
17 Ohio DTPA.

18 2186. Defendants intentionally and knowingly misrepresented material facts regarding
19 the Class Vehicles with intent to mislead Plaintiffs and the Ohio State Class.

20 2187. Defendants knew or should have known that their conduct violated the Ohio
21 DTPA.

22 2188. Defendants owed Plaintiffs and the Ohio State Class a duty to disclose the
23 illegality, public health and safety risks, the true nature of the Class Vehicles, because
24 Defendants:

25 A. possessed exclusive knowledge that they were manufacturing, selling, and
26 distributing vehicles throughout the United States that did not comply with regulations;

27 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
28 Class members; and/or

1 C. made incomplete representations about the Class Vehicles generally, and
2 the use of the defeat device in particular, while purposefully withholding material facts from
3 Plaintiffs that contradicted these representations.

4 2189. Defendants' fraudulent use of the "defeat device" and its concealment of the true
5 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
6 Plaintiffs and the Ohio State Class.

7 2190. Defendants' unfair or deceptive acts or practices were likely to and did in fact
8 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
9 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
10 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

11 2191. Defendants' violations present a continuing risk to Plaintiffs as well as to the
12 general public. Defendants' unlawful acts and practices complained of herein affect the public
13 interest.

14 2192. Plaintiffs and the Ohio State Class suffered ascertainable loss and actual damages
15 as a direct and proximate result of Defendants' misrepresentations and its concealment of and
16 failure to disclose material information. Plaintiffs and the Ohio State Class members who
17 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
18 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
19 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
20 their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their
21 customers to refrain from unfair and deceptive practices under the Ohio DTPA. All owners of
22 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
23 a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants'
24 business.

25 2193. Pursuant to Ohio Rev. Code § 4165.03, Plaintiffs and the Ohio State Class seek an
26 order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages,
27 and attorneys' fees, costs, and any other just and proper relief available under the Ohio DTPA.
28

**OHIO COUNT III:
Breach of Express Warranty
Ohio. Rev. Code § 1302.26, *et seq.* / U.C.C. § 2-313
(On Behalf of the Ohio State Class)**

2194. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2195. This count is brought on behalf of the Ohio State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2196. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ohio Rev. Code §§ 1302.01(5) and 1310.01(A)(20), and “sellers” of motor vehicles under § 1302.01(4).

2197. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Ohio Rev. Code § 1310.01(A)(20).

2198. The Class Vehicles are and were at all relevant times “goods” within the meaning of Ohio Rev. Code §§ 1302.01(8), and 1310.01(A)(8).

2199. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2200. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Ohio State Class members regarding the performance and emission controls of their vehicles.

2201. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2202. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

2203. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

2204. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2205. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 2206. Defendants' warranties formed a basis of the bargain that was reached when Ohio
6 State Class members purchased or leased Class Vehicles that are equipped with a defeat device
7 and non-compliant emission systems.

8 2207. Despite the existence of warranties, Defendants failed to inform Ohio State Class
9 members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 2208. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2209. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2210. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Ohio State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2211. Accordingly, recovery by the Ohio State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 2212. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Ohio State Class members were therefore induced to
28 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2213. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Ohio State Class members' remedies would be insufficient to make them whole.

2214. Finally, because of Defendants' breach of warranty as set forth herein, Ohio State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

2215. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2216. As a direct and proximate result of Defendants' breach of express warranties, Ohio State Class members have been damaged in an amount to be determined at trial.

**OHIO COUNT IV:
Breach of Implied Warranty of Merchantability
Ohio Rev. Code Ann. §§ 1302.27 and 1310.19
(On Behalf of the Ohio State Class)**

2217. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2218. This count is brought on behalf of the Ohio State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2219. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ohio Rev. Code §§ 1302.01(5) and 1310.01(A)(20), and "sellers" of motor vehicles under § 1302.01(4).

2220. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Ohio Rev. Code § 1310.01(A)(20).

2221. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ohio Rev. Code §§ 1302.01(8), and 1310.01(A)(8).

1 2222. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Ohio Rev. Code
3 §§ 1302.27 and 1310.19.

4 2223. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
7 device and do not comply with federal and state emissions standards, rendering certain emissions
8 functions inoperative.

9 2224. Defendants were provided notice of these issues by the investigations of the EPA
10 and California state regulators, and numerous complaints filed against it including the instant
11 complaint, within a reasonable amount of time.

12 2225. As a direct and proximate result of Defendants' breach of the implied warranty of
13 merchantability, Ohio State Class members have been damaged in an amount to be proven at trial.

14 **OKLAHOMA COUNT I:**
15 **Violations of the Oklahoma Consumer Protection Act**
16 **Okla. Stat. Tit. 15 § 751 *et seq.***
 (On Behalf of the Oklahoma State Class)

17 2226. Plaintiffs incorporate by reference each preceding paragraph as though fully set
18 forth herein.

19 2227. This count is brought on behalf of the Oklahoma State Class against all
20 Defendants.

21 2228. Defendants, Plaintiffs and the Oklahoma State Class are "persons" within the
22 meaning of Okla. Stat. Tit. 15 § 752.1.

23 2229. Defendants engaged in "the course of [its] business" within the meaning of Okla.
24 Stat. Tit. 15 § 752.3 with respect to the acts alleged herein.

25 2230. The Oklahoma Consumer Protection Act ("Oklahoma CPA") prohibits, in the
26 course of business: "mak[ing] a false or misleading representation, knowingly or with reason to
27 know, as to the characteristics ..., uses, [or] benefits, of the subject of a consumer transaction," or
28 making a false representation, "knowingly or with reason to know, that the subject of a consumer

1 transaction is of a particular standard, style or model, if it is of another or “[a]dvertis[ing],
2 knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it
3 as advertised;” and otherwise committing “an unfair or deceptive trade practice.” Okla. Stat. Tit.
4 753.

5 2231. In the course of its business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
7 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
8 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
9 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
10 testing by way of deliberately induced false readings.

11 2232. Oklahoma State Class members had no way of discerning that Defendants’
12 representations were false and misleading because Defendants’ defeat device software was
13 extremely sophisticated technology. Plaintiffs and Oklahoma State Class members did not and
14 could not unravel Defendants’ deception on their own.

15 2233. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
16 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
17 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
18 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
19 a transaction involving Class Vehicles has been supplied in accordance with a previous
20 representation when it has not.

21 2234. The Clean Air Act and EPA regulations require that automobiles limit their
22 emissions output to specified levels. These laws are intended for the protection of public health
23 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
24 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
25 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
26 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
27 Oklahoma CPA.
28

1 2235. Defendants intentionally and knowingly misrepresented material facts regarding
2 the Class Vehicles with intent to mislead Plaintiffs and the Oklahoma State Class.

3 2236. Defendants knew or should have known that their conduct violated the Oklahoma
4 CPA.

5 2237. Defendants owed Plaintiffs and the Oklahoma State Class a duty to disclose the
6 illegality, public health and safety risks, the true nature of the Class Vehicles, because
7 Defendants:

8 A. possessed exclusive knowledge that they were manufacturing, selling, and
9 distributing vehicles throughout the United States that did not comply with regulations;

10 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
11 Class members; and/or

12 C. made incomplete representations about the Class Vehicles generally, and
13 the use of the defeat device in particular, while purposefully withholding material facts from
14 Plaintiffs that contradicted these representations.

15 2238. Defendants' fraudulent use of the "defeat device" and its concealment of the true
16 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
17 Plaintiffs and the Oklahoma State Class.

18 2239. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
20 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
21 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

22 2240. Defendants' violations present a continuing risk to Plaintiffs as well as to the
23 general public. Defendants' unlawful acts and practices complained of herein affect the public
24 interest.

25 2241. Plaintiffs and the Oklahoma State Class suffered ascertainable loss and actual
26 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
27 of and failure to disclose material information. Plaintiffs and the Oklahoma State Class members
28 who purchased or leased the Class Vehicles would not have purchased or leased them at all

1 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
 2 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
 3 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 4 their customers to refrain from unfair and deceptive practices under the Oklahoma CPA. All
 5 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 6 vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the course of
 7 Defendants’ business.

8 2242. Pursuant to Okla. Stat. Tit. 15 § 761.1, Plaintiffs and the Oklahoma State Class
 9 seek an order enjoining Defendants’ unfair and/or deceptive acts or practices, damages, punitive
 10 damages, and attorneys’ fees, costs, and any other just and proper relief available under the
 11 Oklahoma CPA.

12 **OKLAHOMA COUNT II:**
 13 **Breach of Express Warranty**
 14 **Okla. Stat. Tit. 12 §§ 2-313 and 2A-210**
(On Behalf of the Oklahoma State Class)

15 2243. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 16 fully set forth herein.

17 2244. This count is brought on behalf of the Oklahoma State Class against the
 18 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

19 2245. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 20 vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of motor vehicles
 21 under § 2A-103(1)(t).

22 2246. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 23 of motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).

24 2247. The Class Vehicles are and were at all relevant times “goods” within the meaning
 25 of Okla. Stat. Tit. 12A §§ 2-105(1) and 2A-103(1)(h).

26 2248. In connection with the purchase or lease of each one of its new vehicles,
 27 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 28

1 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
2 materials or workmanship.”

3 2249. Defendants also made numerous representations, descriptions, and promises to
4 Plaintiffs and Oklahoma State Class members regarding the performance and emission controls of
5 their vehicles.

6 2250. For example, as shown below, Defendants included in the warranty booklets for
7 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
8 so as to conform at the time of sale with all applicable regulations of the United States
9 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

19 2251. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
20 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 2252. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
24 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles (whichever
28 comes first). These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 2253. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
5 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
6 Design and Defect Warranty required by the EPA covers repair of emission control or emission
7 related parts, which fail to function or function improperly because of a defect in materials or
8 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
9 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
10 comes first.

11 2254. As manufacturers of light-duty vehicles, Defendants were required to provide
12 these warranties to purchasers or lessees of Class Vehicles.

13 2255. Defendants' warranties formed a basis of the bargain that was reached when
14 Oklahoma State Class members purchased or leased Class Vehicles that are equipped with a
15 defeat device and non-compliant emission systems.

16 2256. Despite the existence of warranties, Defendants failed to inform Oklahoma State
17 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
18 compliance with applicable state and federal emissions laws, and failed to fix the defective
19 emission components free of charge.

20 2257. Defendants breached the express warranty promising to repair and correct
21 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
22 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

23 2258. Affording Defendants a reasonable opportunity to cure their breach of written
24 warranties would be unnecessary and futile here.

25 2259. Furthermore, the limited warranty promising to repair and correct Defendants'
26 defect in materials and workmanship fails in its essential purpose because the contractual remedy
27 is insufficient to make Oklahoma State Class members whole and because Defendants have failed
28 and/or have refused to adequately provide the promised remedies within a reasonable time.

1 2260. Accordingly, recovery by the Oklahoma State Class members is not restricted to
2 the limited warranty promising to repair and correct Defendants' defect in materials and
3 workmanship, and they seek all remedies as allowed by law.

4 2261. Also, as alleged in more detail herein, at the time Defendants warranted and sold
5 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
6 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Oklahoma State Class members were therefore
8 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 2262. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
11 and workmanship as many incidental and consequential damages have already been suffered
12 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
13 continued failure to provide such limited remedy within a reasonable time, and any limitation on
14 the Oklahoma State Class members' remedies would be insufficient to make them whole.

15 2263. Finally, because of Defendants' breach of warranty as set forth herein, Oklahoma
16 State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 2264. Defendants were provided notice of these issues by numerous complaints filed
20 against them, including the instant Complaint, within a reasonable amount of time.

21 2265. As a direct and proximate result of Defendants' breach of express warranties,
22 Oklahoma State Class members have been damaged in an amount to be determined at trial.

23 **OKLAHOMA COUNT III:**
24 **Breach of Implied Warranty of Merchantability**
25 **Okla. Stat. Tit. 12A §§ 2-314 and 2A-212**
26 **(On Behalf of the Oklahoma State Class)**

27 2266. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
28 paragraphs as though fully set forth herein.

1 2267. This count is brought on behalf of the Oklahoma State Class against the
2 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

3 2268. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of motor vehicles
5 under § 2A-103(1)(t).

6 2269. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
7 of motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).

8 2270. The Class Vehicles are and were at all relevant times “goods” within the meaning
9 of Okla. Stat. Tit. 12A §§ 2-105(1) and 2A-103(1)(h).

10 2271. A warranty that the Class Vehicles were in merchantable condition and fit for the
11 ordinary purpose for which vehicles are used is implied by law pursuant to Okla. Stat. Tit. 12A
12 §§ 2-314 and 2A-212.

13 2272. These Class Vehicles, when sold or leased and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
15 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
16 device and do not comply with federal and state emissions standards, rendering certain emissions
17 functions inoperative.

18 2273. Defendants were provided notice of these issues by the investigations of the EPA
19 and California state regulators, and numerous complaints filed against it including the instant
20 complaint, within a reasonable amount of time.

21 2274. As a direct and proximate result of Defendants’ breach of the implied warranty of
22 merchantability, Oklahoma State Class members have been damaged in an amount to be proven
23 at trial.

24 **OREGON COUNT I:**
25 **Violations of the Oregon Unlawful Trade Practices Act**
26 **Or. Rev. Stat. § 646.605, *et seq.***
 (On Behalf of the Oregon State Class)

27 2275. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 2276. This count is brought on behalf of the Oregon State Class against all Defendants.

2 2277. Defendants, Plaintiffs and the Oregon State Class are “persons” within the
3 meaning of Or. Rev. Stat. § 646.605(4).

4 2278. Defendants are engaged in “trade” or “commerce” within the meaning of Or. Rev.
5 Stat. § 646.605(8).

6 2279. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits “unfair or
7 deceptive acts conduct in trade or commerce” Or. Rev. Stat. § 646.608(1).

8 2280. In the course of its business, Defendants concealed and suppressed material facts
9 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
10 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
11 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
12 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
13 testing by way of deliberately induced false readings.

14 2281. Oregon State Class members had no way of discerning that Defendants’
15 representations were false and misleading because Defendants’ defeat device software was
16 extremely sophisticated technology. Plaintiffs and Oregon State Class members did not and could
17 not unravel Defendants’ deception on their own.

18 2282. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
19 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
20 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
21 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
22 a transaction involving Class Vehicles has been supplied in accordance with a previous
23 representation when it has not.

24 2283. The Clean Air Act and EPA regulations require that automobiles limit their
25 emissions output to specified levels. These laws are intended for the protection of public health
26 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
27 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
28 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available

1 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
2 Oregon UTPA.

3 2284. Defendants intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the Oregon State Class.

5 2285. Defendants knew or should have known that their conduct violated the Oregon
6 UTPA.

7 2286. Defendants owed Plaintiffs and the Oregon State Class a duty to disclose the
8 illegality, public health and safety risks, the true nature of the Class Vehicles, because
9 Defendants:

10 A. possessed exclusive knowledge that they were manufacturing, selling, and
11 distributing vehicles throughout the United States that did not comply with regulations;

12 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
13 Class members; and/or

14 C. made incomplete representations about the Class Vehicles generally, and
15 the use of the defeat device in particular, while purposefully withholding material facts from
16 Plaintiffs that contradicted these representations.

17 2287. Defendants' fraudulent use of the "defeat device" and its concealment of the true
18 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
19 Plaintiffs and the Oregon State Class.

20 2288. Defendants' unfair or deceptive acts or practices were likely to and did in fact
21 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
22 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
23 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

24 2289. Defendants' violations present a continuing risk to Plaintiffs as well as to the
25 general public. Defendants' unlawful acts and practices complained of herein affect the public
26 interest.

27 2290. Plaintiffs and the Oregon State Class suffered ascertainable loss and actual
28 damages as a direct and proximate result of Defendants' misrepresentations and its concealment

1 of and failure to disclose material information. Plaintiffs and the Oregon State Class members
 2 who purchased or leased the Class Vehicles would not have purchased or leased them at all
 3 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
 4 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
 5 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 6 their customers to refrain from unfair and deceptive practices under the Oregon UTPA. All
 7 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 8 vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the course of
 9 Defendants’ business.

10 2291. Pursuant to Or. Rev. Stat. § 646.638, Plaintiffs and the Oregon State Class seek an
 11 order enjoining Defendants’ unfair and/or deceptive acts or practices, damages, punitive damages,
 12 and attorneys’ fees, costs, and any other just and proper relief available under the Oregon UTPA.

13 **OREGON COUNT II:**
 14 **Breach of Express Warranty**
Or. Rev. Stat. §§ 72.3130 and 72A.2100
 15 **(On Behalf of the Oregon State Class)**

16 2292. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 17 fully set forth herein.

18 2293. This count is brought on behalf of the Oregon State Class against the Volkswagen
 19 and Audi Defendants (collectively for this count, “Defendants”).

20 2294. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 21 vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and “sellers” of motor vehicles
 22 under § 72.1030(1)(d).

23 2295. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 24 of motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

25 2296. The Class Vehicles are and were at all relevant times “goods” within the meaning
 26 of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).

27 2297. In connection with the purchase or lease of each one of its new vehicles,
 28 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever

1 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
2 materials or workmanship.”

3 2298. Defendants also made numerous representations, descriptions, and promises to
4 Plaintiffs and Oregon State Class members regarding the performance and emission controls of
5 their vehicles.

6 2299. For example, as shown below, Defendants included in the warranty booklets for
7 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
8 so as to conform at the time of sale with all applicable regulations of the United States
9 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

19 2300. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
20 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 2301. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
24 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles (whichever
28 comes first). These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 2302. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
5 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
6 Design and Defect Warranty required by the EPA covers repair of emission control or emission
7 related parts, which fail to function or function improperly because of a defect in materials or
8 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
9 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
10 comes first.

11 2303. As manufacturers of light-duty vehicles, Defendants were required to provide
12 these warranties to purchasers or lessees of Class Vehicles.

13 2304. Defendants' warranties formed a basis of the bargain that was reached when
14 Oregon State Class members purchased or leased Class Vehicles that are equipped with a defeat
15 device and non-compliant emission systems.

16 2305. Despite the existence of warranties, Defendants failed to inform Oregon State
17 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
18 compliance with applicable state and federal emissions laws, and failed to fix the defective
19 emission components free of charge.

20 2306. Defendants breached the express warranty promising to repair and correct
21 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
22 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

23 2307. Affording Defendants a reasonable opportunity to cure their breach of written
24 warranties would be unnecessary and futile here.

25 2308. Furthermore, the limited warranty promising to repair and correct Defendants'
26 defect in materials and workmanship fails in its essential purpose because the contractual remedy
27 is insufficient to make Oregon State Class members whole and because Defendants have failed
28 and/or have refused to adequately provide the promised remedies within a reasonable time.

1 2309. Accordingly, recovery by the Oregon State Class members is not restricted to the
2 limited warranty promising to repair and correct Defendants' defect in materials and
3 workmanship, and they seek all remedies as allowed by law.

4 2310. Also, as alleged in more detail herein, at the time Defendants warranted and sold
5 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
6 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Oregon State Class members were therefore induced
8 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 2311. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
11 and workmanship as many incidental and consequential damages have already been suffered
12 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
13 continued failure to provide such limited remedy within a reasonable time, and any limitation on
14 the Oregon State Class members' remedies would be insufficient to make them whole.

15 2312. Finally, because of Defendants' breach of warranty as set forth herein, Oregon
16 State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 2313. Defendants were provided notice of these issues by numerous complaints filed
20 against them, including the instant Complaint, within a reasonable amount of time.

21 2314. As a direct and proximate result of Defendants' breach of express warranties,
22 Oregon State Class members have been damaged in an amount to be determined at trial.

23 **OREGON COUNT III:**
24 **Breach of Implied Warranty of Merchantability**
25 **Or. Rev. Stat. §§ 72.3140 and 72A.2120**
26 **(On Behalf of the Oregon State Class)**

27 2315. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
28 paragraphs as though fully set forth herein.

2316. This count is brought on behalf of the Oregon State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2317. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and “sellers” of motor vehicles under § 72.1030(1)(d).

2318. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

2319. The Class Vehicles are and were at all relevant times “goods” within the meaning of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).

2320. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Or. Rev. Stat. §§ 72.3140 and 72A-2120.

2321. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2322. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2323. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Oregon State Class members have been damaged in an amount to be proven at trial.

PENNSYLVANIA COUNT I:
Violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law
73 P.S. § 201-1 *et seq.*
(On Behalf of the Pennsylvania State Class)

2324. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.

1 2325. This count is brought on behalf of the Pennsylvania State Class against all
2 Defendants.

3 2326. Defendants, Plaintiffs and the Pennsylvania State Class are “persons” within the
4 meaning of 73 P.S. § 201-2(2).

5 2327. Defendants engaged in “trade” or “commerce” within the meaning of 73 P.S.
6 § 201-2(3).

7 2328. The Pennsylvania Unfair Trade Practices Act (“Pennsylvania UTPA”) prohibits
8 “unfair or deceptive acts or practices in the conduct of any trade or commerce.” 73 P.S. § 201 3.

9 2329. In the course of its business, Defendants concealed and suppressed material facts
10 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
11 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
12 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
13 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
14 testing by way of deliberately induced false readings.

15 2330. Pennsylvania State Class members had no way of discerning that Defendants’
16 representations were false and misleading because Defendants’ defeat device software was
17 extremely sophisticated technology. Plaintiffs and Pennsylvania State Class members did not and
18 could not unravel Defendants’ deception on their own.

19 2331. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
20 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
21 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
22 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
23 a transaction involving Class Vehicles has been supplied in accordance with a previous
24 representation when it has not.

25 2332. The Clean Air Act and EPA regulations require that automobiles limit their
26 emissions output to specified levels. These laws are intended for the protection of public health
27 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
28 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By

1 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
2 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
3 Pennsylvania UTPA.

4 2333. Defendants intentionally and knowingly misrepresented material facts regarding
5 the Class Vehicles with intent to mislead Plaintiffs and the Pennsylvania State Class.

6 2334. Defendants knew or should have known that their conduct violated the
7 Pennsylvania UTPA.

8 2335. Defendants owed Plaintiffs and the Pennsylvania State Class a duty to disclose the
9 illegality, public health and safety risks, the true nature of the Class Vehicles, because
10 Defendants:

11 A. possessed exclusive knowledge that they were manufacturing, selling, and
12 distributing vehicles throughout the United States that did not comply with regulations;

13 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
14 Class members; and/or

15 C. made incomplete representations about the Class Vehicles generally, and
16 the use of the defeat device in particular, while purposefully withholding material facts from
17 Plaintiffs that contradicted these representations.

18 2336. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
19 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
20 Plaintiffs and the Pennsylvania State Class.

21 2337. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
22 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
23 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
24 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

25 2338. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
26 general public. Defendants’ unlawful acts and practices complained of herein affect the public
27 interest.

2339. Plaintiffs and the Pennsylvania State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the Pennsylvania State Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Pennsylvania UTPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the course of Defendants’ business.

2340. As a direct and proximate result of Defendants’ violations of the Pennsylvania UTPA, Plaintiffs and the Pennsylvania State Class have suffered injury-in-fact and/or actual damage.

2341. Pursuant to 73 P.S. § 201-9.2(a), Plaintiffs and the Pennsylvania State Class seek an order enjoining Defendants’ unfair and/or deceptive acts or practices, damages, punitive damages, and attorneys’ fees, costs, and any other just and proper relief available under the Pennsylvania UTPA.

**PENNSYLVANIA COUNT II:
Breach of Express Warranty
13. Pa. Cons. Stat. §§ 2313 and 2A210
(On Behalf of the Pennsylvania State Class)**

2342. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2343. This count is brought on behalf of the Pennsylvania State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2344. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under 13 Pa. Cons. Stat. §§ 2104 and 2A103(a), and “sellers” of motor vehicles under § 2103(a).

2345. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under 13 Pa. Cons. Stat. § 2A103(a).

2346. The Class Vehicles are and were at all relevant times “goods” within the meaning of 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).

2347. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2348. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Pennsylvania State Class members regarding the performance and emission controls of their vehicles.

2349. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“Audi”), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2350. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1 2351. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 2352. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 2353. As manufacturers of light-duty vehicles, Defendants were required to provide
19 these warranties to purchasers or lessees of Class Vehicles.

20 2354. Defendants' warranties formed a basis of the bargain that was reached when
21 Pennsylvania State Class members purchased or leased Class Vehicles that are equipped with a
22 defeat device and non-compliant emission systems.

23 2355. Despite the existence of warranties, Defendants failed to inform Pennsylvania
24 State Class members that the Class Vehicles were intentionally designed and manufactured to be
25 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
26 emission components free of charge.

1 2356. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 2357. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 2358. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy
8 is insufficient to make Pennsylvania State Class members whole and because Defendants have
9 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

10 2359. Accordingly, recovery by the Pennsylvania State Class members is not restricted
11 to the limited warranty promising to repair and correct Defendants' defect in materials and
12 workmanship, and they seek all remedies as allowed by law.

13 2360. Also, as alleged in more detail herein, at the time Defendants warranted and sold
14 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
15 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. Pennsylvania State Class members were therefore
17 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 2361. Moreover, many of the injuries flowing from the Class Vehicles cannot be
19 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
20 and workmanship as many incidental and consequential damages have already been suffered
21 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
22 continued failure to provide such limited remedy within a reasonable time, and any limitation on
23 the Pennsylvania State Class members' remedies would be insufficient to make them whole.

24 2362. Finally, because of Defendants' breach of warranty as set forth herein,
25 Pennsylvania State Class members assert, as additional and/or alternative remedies, the
26 revocation of acceptance of the goods and the return to them the purchase or lease price of all
27 Class Vehicles currently owned or leased, and for such other incidental and consequential
28 damages as allowed.

2363. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2364. As a direct and proximate result of Defendants' breach of express warranties, Pennsylvania State Class members have been damaged in an amount to be determined at trial.

**PENNSYLVANIA COUNT III:
Breach of Implied Warranty of Merchantability
13. Pa. Cons. Stat. §§ 2314 and 2A212
(On Behalf of the Pennsylvania State Class)**

2365. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2366. This count is brought on behalf of the Pennsylvania State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2367. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under 13 Pa. Cons. Stat. §§ 2104 and 2A103(a), and "sellers" of motor vehicles under § 2103(a).

2368. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under 13 Pa. Cons. Stat. § 2A103(a).

2369. The Class Vehicles are and were at all relevant times "goods" within the meaning of 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).

2370. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 13 Pa. Cons. Stat. §§ 2314 and 2A212.

2371. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2372. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2373. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Pennsylvania State Class members have been damaged in an amount to be proven at trial.

**RHODE ISLAND COUNT I:
Violations of the Rhode Island Deceptive Trade Practices and Consumer Protection Law
R.I. Gen. Laws § 6-13.1 *et seq.*
(On Behalf of the Rhode Island State Class)**

2374. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2375. This count is brought on behalf of the Rhode Island State Class against all Defendants.

2376. Defendants, Plaintiffs and the Rhode Island State Class are "persons" within the meaning of R.I. Gen. Laws § 6-13.1-1(3).

2377. Defendants are engaged in "trade" or "commerce" within the meaning of R.I. Gen. Laws § 6-13.1-1(5).

2378. The Rhode Island Deceptive Trade Practices Act ("Rhode Island DTPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" including: (v) [r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have"; "(vii) [r]epresenting that goods or services are of a particular standard, quality, or grade ..., if they are of another"; (ix) [a]dvertising goods or services with intent not to sell them as advertised"; "(xiii) [u]sing any other methods, acts or practices which mislead or deceive members of the public in a material respect." R.I. Gen. Laws § 6-13.1-1(6).

2379. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during

1 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
2 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
3 testing by way of deliberately induced false readings.

4 2380. Rhode Island State Class members had no way of discerning that Defendants’
5 representations were false and misleading because Defendants’ defeat device software was
6 extremely sophisticated technology. Plaintiffs and Rhode Island State Class members did not and
7 could not unravel Defendants’ deception on their own.

8 2381. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
9 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
10 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
11 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
12 a transaction involving Class Vehicles has been supplied in accordance with a previous
13 representation when it has not.

14 2382. The Clean Air Act and EPA regulations require that automobiles limit their
15 emissions output to specified levels. These laws are intended for the protection of public health
16 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
17 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
18 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
19 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
20 Rhode Island DTPA.

21 2383. Defendants intentionally and knowingly misrepresented material facts regarding
22 the Class Vehicles with intent to mislead Plaintiffs and the Rhode Island State Class.

23 2384. Defendants knew or should have known that their conduct violated the Rhode
24 Island DTPA.

25 2385. Defendants owed Plaintiffs and the Rhode Island State Class a duty to disclose the
26 illegality, public health and safety risks, the true nature of the Class Vehicles, because
27 Defendants:
28

1 A. possessed exclusive knowledge that they were manufacturing, selling, and
2 distributing vehicles throughout the United States that did not comply with regulations;

3 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
4 Class members; and/or

5 C. made incomplete representations about the Class Vehicles generally, and
6 the use of the defeat device in particular, while purposefully withholding material facts from
7 Plaintiffs that contradicted these representations.

8 2386. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
9 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
10 Plaintiffs and the Rhode Island State Class.

11 2387. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
12 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
13 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
14 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

15 2388. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
16 general public. Defendants’ unlawful acts and practices complained of herein affect the public
17 interest.

18 2389. Plaintiffs and the Rhode Island State Class suffered ascertainable loss and actual
19 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
20 of and failure to disclose material information. Plaintiffs and the Rhode Island State Class
21 members who purchased or leased the Class Vehicles would not have purchased or leased them at
22 all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles
23 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered
24 diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing
25 duty to all their customers to refrain from unfair and deceptive practices under the Rhode Island
26 DTPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished
27 value of their vehicles as a result of Defendants’ deceptive and unfair acts and practices made in
28 the course of Defendants’ business.

2390. Plaintiffs and the Rhode Island State Class are entitled to recover the greater of actual damages or \$200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a). Plaintiffs and the Rhode Island State Class are also entitled to punitive damages because Defendants engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of others.

**RHODE ISLAND COUNT II:
Breach of Express Warranty
6A R.I. Gen. Laws §§ 6A-2-313 and 6A-2.1-210
(On Behalf of the Rhode Island State Class)**

2391. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2392. This count is brought on behalf of the Rhode Island State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2393. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under 6A R.I. Gen. Laws §§ 6A-2-104(1) and 6A-2.1-103(1)(t), and “sellers” of motor vehicles under § 6A-2-103(a)(4).

2394. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under 6A R.I. Gen. Laws § 6A-2.1-103(1)(p).

2395. The Class Vehicles are and were at all relevant times “goods” within the meaning of 6A R.I. Gen. Laws §§ 6A-2-105(1) and 6A-2.1-103(1)(h).

2396. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2397. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Rhode Island State Class members regarding the performance and emission controls of their vehicles.

2398. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped

1 so as to conform at the time of sale with all applicable regulations of the United States
 2 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

12 2399. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
 13 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
 14 Warranty.”

15 2400. The EPA requires vehicle manufacturers to provide a Performance Warranty with
 16 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
 17 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
 18 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
 19 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
 20 emission control components are covered for the first eight years or 80,000 miles (whichever
 21 comes first). These major emission control components subject to the longer warranty include the
 22 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
 23 device or computer.

24 2401. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
 25 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
 26 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
 27 Design and Defect Warranty required by the EPA covers repair of emission control or emission
 28 related parts, which fail to function or function improperly because of a defect in materials or

1 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
2 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
3 comes first.

4 2402. As manufacturers of light-duty vehicles, Defendants were required to provide
5 these warranties to purchasers or lessees of Class Vehicles.

6 2403. Defendants' warranties formed a basis of the bargain that was reached when
7 Rhode Island State Class members purchased or leased Class Vehicles that are equipped with a
8 defeat device and non-compliant emission systems.

9 2404. Despite the existence of warranties, Defendants failed to inform Rhode Island
10 State Class members that the Class Vehicles were intentionally designed and manufactured to be
11 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
12 emission components free of charge.

13 2405. Defendants breached the express warranty promising to repair and correct
14 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
15 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

16 2406. Affording Defendants a reasonable opportunity to cure their breach of written
17 warranties would be unnecessary and futile here.

18 2407. Furthermore, the limited warranty promising to repair and correct Defendants'
19 defect in materials and workmanship fails in its essential purpose because the contractual remedy
20 is insufficient to make Rhode Island State Class members whole and because Defendants have
21 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

22 2408. Accordingly, recovery by the Rhode Island State Class members is not restricted to
23 the limited warranty promising to repair and correct Defendants' defect in materials and
24 workmanship, and they seek all remedies as allowed by law.

25 2409. Also, as alleged in more detail herein, at the time Defendants warranted and sold
26 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
27 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
28

1 material facts regarding the Class Vehicles. Rhode Island State Class members were therefore
2 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 2410. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
5 and workmanship as many incidental and consequential damages have already been suffered
6 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
7 continued failure to provide such limited remedy within a reasonable time, and any limitation on
8 the Rhode Island State Class members' remedies would be insufficient to make them whole.

9 2411. Finally, because of Defendants' breach of warranty as set forth herein, Rhode
10 Island State Class members assert, as additional and/or alternative remedies, the revocation of
11 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
12 currently owned or leased, and for such other incidental and consequential damages as allowed.

13 2412. Defendants were provided notice of these issues by numerous complaints filed
14 against them, including the instant Complaint, within a reasonable amount of time.

15 2413. As a direct and proximate result of Defendants' breach of express warranties,
16 Rhode Island State Class members have been damaged in an amount to be determined at trial.

17 **RHODE ISLAND COUNT III:**
18 **Breach of Implied Warranty of Merchantability**
19 **6A R.I. Gen. Laws §§ 6A-2-314 and 6A-2.1-212**
20 **(On Behalf of the Rhode Island State Class)**

21 2414. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
22 paragraphs as though fully set forth herein.

23 2415. This count is brought on behalf of the Rhode Island State Class against the
24 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

25 2416. Defendants are and were at all relevant times "merchant[s]" with respect to motor
26 vehicles under 6A R.I. Gen. Laws §§ 6A-2-104(1) and 6A-2.1-103(1)(t), and "sellers" of motor
27 vehicles under § 6A-2-103(a)(4).

28 2417. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
of motor vehicles under 6A R.I. Gen. Laws § 6A-2.1-103(1)(p).

2418. The Class Vehicles are and were at all relevant times “goods” within the meaning of 6A R.I. Gen. Laws §§ 6A-2-105(1) and 6A-2.1-103(1)(h).

2419. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 6A R.I. Gen. Laws §§ 6A-2-314 and 6A-2.1-212.

2420. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2421. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2422. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Rhode Island State Class members have been damaged in an amount to be proven at trial.

**SOUTH CAROLINA COUNT I:
Violations of the South Carolina Unfair Trade Practices Act
S.C. Code Ann. § 39-5-10 *et seq.*
(On Behalf of the South Carolina State Class)**

2423. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2424. This count is brought on behalf of the South Carolina State Class against all Defendants.

2425. Defendants, Plaintiffs and the South Carolina State Class are “persons” within the meaning of S.C. Code § 39-5-10(a).

2426. Defendants are engaged in “trade” or “commerce” within the meaning of S.C. Code § 39-5-10(b).

1 2427. The South Carolina Unfair Trade Practices Act (“South Carolina UTPA”)
2 prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C.
3 Code § 39-5-20(a).

4 2428. In the course of its business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
6 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
7 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
8 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
9 testing by way of deliberately induced false readings.

10 2429. South Carolina State Class members had no way of discerning that Defendants’
11 representations were false and misleading because Defendants’ defeat device software was
12 extremely sophisticated technology. Plaintiffs and South Carolina State Class members did not
13 and could not unravel Defendants’ deception on their own.

14 2430. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
18 a transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 2431. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
26 South Carolina UTPA.

27 2432. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiffs and the South Carolina State Class.

1 2433. Defendants knew or should have known that their conduct violated the South
2 Carolina UTPA.

3 2434. Defendants owed Plaintiffs and the South Carolina State Class a duty to disclose
4 the illegality, public health and safety risks, the true nature of the Class Vehicles, because
5 Defendants:

6 A. possessed exclusive knowledge that they were manufacturing, selling, and
7 distributing vehicles throughout the United States that did not comply with regulations;

8 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
9 Class members; and/or

10 C. made incomplete representations about the Class Vehicles generally, and
11 the use of the defeat device in particular, while purposefully withholding material facts from
12 Plaintiffs that contradicted these representations.

13 2435. Defendants' fraudulent use of the "defeat device" and its concealment of the true
14 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
15 Plaintiffs and the South Carolina State Class.

16 2436. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
18 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
19 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

20 2437. Defendants' violations present a continuing risk to Plaintiffs as well as to the
21 general public. Defendants' unlawful acts and practices complained of herein affect the public
22 interest.

23 2438. Plaintiffs and the South Carolina State Class suffered ascertainable loss and actual
24 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
25 of and failure to disclose material information. Plaintiffs and the South Carolina State Class
26 members who purchased or leased the Class Vehicles would not have purchased or leased them at
27 all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles
28 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered

1 diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing
 2 duty to all their customers to refrain from unfair and deceptive practices under the South Carolina
 3 UTPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished
 4 value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in
 5 the course of Defendants' business.

6 2439. Pursuant to S.C. Code § 39-5-140(a), Plaintiffs and the South Carolina State Class
 7 seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, treble
 8 damages for willful and knowing violations, punitive damages, and attorneys' fees, costs, and any
 9 other just and proper relief available under the South Carolina UTPA.

10 **SOUTH CAROLINA COUNT II:**
 11 **Violations of the South Carolina Regulation of Manufacturers, Distributors, & Dealers Act**
 12 **S.C. Code Ann. § 56-15-10 *et seq.***
(On Behalf of the South Carolina State Class)

13 2440. Plaintiffs reallege and incorporates by reference all paragraphs as though fully set
 14 forth herein.

15 2441. This count is brought on behalf of the South Carolina State Class against the
 16 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

17 2442. Defendants are "manufacturer[s]" as set forth in S.C. Code Ann. § 56-15-10, as it
 18 is engaged in the business of manufacturing or assembling new and unused motor vehicles.

19 2443. Defendants committed unfair or deceptive acts or practices that violated the South
 20 Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"), S.C. Code
 21 Ann. § 56-15-30.

22 2444. Defendants engaged in actions which were arbitrary, in bad faith, unconscionable,
 23 and which caused damage to Plaintiffs, the South Carolina State Class, and to the public.

24 2445. Defendants' bad faith and unconscionable actions include, but are not limited to:
 25 (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they
 26 do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade
 27 when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, (4)
 28 representing that a transaction involving Class Vehicles confers or involves rights, remedies, and

obligations which it does not, and (5) representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.

2446. Defendants resorted to and used false and misleading advertisements in connection with its business. As alleged above, Defendants made numerous material statements about the safety, efficiency and reliability of the Class Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants' unlawful advertising and representations as a whole.

2447. Pursuant to S.C. Code Ann. § 56-15-110(2), Plaintiffs bring this action on behalf of themselves and the South Carolina State Class, as the action is one of common or general interest to many persons and the parties are too numerous to bring them all before the court.

2448. Plaintiffs and the South Carolina State Class are entitled to double their actual damages, the cost of the suit, attorney's fees pursuant to S.C. Code Ann. § 56-15-110. Plaintiffs also seek injunctive relief under S.C. Code Ann. § 56-15-110. Plaintiffs also seeks treble damages because Defendants acted maliciously.

**SOUTH CAROLINA COUNT III:
Breach of Express Warranty
S.C. Code §§ 36-2-313 and 36-2A-210
(On Behalf of the South Carolina State Class)**

2449. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2450. This count is brought on behalf of the South Carolina State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2451. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under S.C. Code §§ 36-2-104(1) and 36-2A-103(1)(t), and "sellers" of motor vehicles under § 36-2-103(1)(d).

2452. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under S.C. Code § 36-2A-103(1)(p).

2453. The Class Vehicles are and were at all relevant times "goods" within the meaning of S.C. Code §§ 36-2-105(1) and 36-2A-103(1)(h).

1 2454. In connection with the purchase or lease of each one of its new vehicles,
2 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
3 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
4 materials or workmanship.”

5 2455. Defendants also made numerous representations, descriptions, and promises to
6 Plaintiffs and South Carolina State Class members regarding the performance and emission
7 controls of their vehicles.

8 2456. For example, as shown below, Defendants included in the warranty booklets for
9 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
10 so as to conform at the time of sale with all applicable regulations of the United States
11 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

21 2457. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
22 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
23 Warranty.”

24 2458. The EPA requires vehicle manufacturers to provide a Performance Warranty with
25 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
26 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
27 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
28 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major

1 emission control components are covered for the first eight years or 80,000 miles (whichever
2 comes first). These major emission control components subject to the longer warranty include the
3 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
4 device or computer.

5 2459. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
6 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
7 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
8 Design and Defect Warranty required by the EPA covers repair of emission control or emission
9 related parts, which fail to function or function improperly because of a defect in materials or
10 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
11 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
12 comes first.

13 2460. As manufacturers of light-duty vehicles, Defendants were required to provide
14 these warranties to purchasers or lessees of Class Vehicles.

15 2461. Defendants' warranties formed a basis of the bargain that was reached when South
16 Carolina State Class members purchased or leased Class Vehicles that are equipped with a defeat
17 device and non-compliant emission systems.

18 2462. Despite the existence of warranties, Defendants failed to inform South Carolina
19 State Class members that the Class Vehicles were intentionally designed and manufactured to be
20 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
21 emission components free of charge.

22 2463. Defendants breached the express warranty promising to repair and correct
23 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
24 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

25 2464. Affording Defendants a reasonable opportunity to cure their breach of written
26 warranties would be unnecessary and futile here.

27 2465. Furthermore, the limited warranty promising to repair and correct Defendants'
28 defect in materials and workmanship fails in its essential purpose because the contractual remedy

1 is insufficient to make South Carolina State Class members whole and because Defendants have
2 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

3 2466. Accordingly, recovery by the South Carolina State Class members is not restricted
4 to the limited warranty promising to repair and correct Defendants' defect in materials and
5 workmanship, and they seek all remedies as allowed by law.

6 2467. Also, as alleged in more detail herein, at the time Defendants warranted and sold
7 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
8 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. South Carolina State Class members were therefore
10 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 2468. Moreover, many of the injuries flowing from the Class Vehicles cannot be
12 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
13 and workmanship as many incidental and consequential damages have already been suffered
14 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
15 continued failure to provide such limited remedy within a reasonable time, and any limitation on
16 the South Carolina State Class members' remedies would be insufficient to make them whole.

17 2469. Finally, because of Defendants' breach of warranty as set forth herein, South
18 Carolina State Class members assert, as additional and/or alternative remedies, the revocation of
19 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
20 currently owned or leased, and for such other incidental and consequential damages as allowed.

21 2470. Defendants were provided notice of these issues by numerous complaints filed
22 against them, including the instant Complaint, within a reasonable amount of time.

23 2471. As a direct and proximate result of Defendants' breach of express warranties,
24 South Carolina State Class members have been damaged in an amount to be determined at trial.

**SOUTH CAROLINA COUNT IV:
Breach of Implied Warranty of Merchantability
S.C. Code §§ 36-2-314 and 36-2A-212
(On Behalf of the South Carolina State Class)**

2472. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2473. This count is brought on behalf of the South Carolina State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2474. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under S.C. Code §§ 36-2-104(1) and 36-2A-103(1)(t), and “sellers” of motor vehicles under § 36-2-103(1)(d).

2475. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under S.C. Code § 36-2A-103(1)(p).

2476. The Class Vehicles are and were at all relevant times “goods” within the meaning of S.C. Code §§ 36-2-105(1) and 36-2A-103(1)(h).

2477. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to S.C. Code §§ 36-2-314 and 36-2A-212.

2478. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2479. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2480. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, South Carolina State Class members have been damaged in an amount to be proven at trial.

**SOUTH DAKOTA COUNT I:
Violations of the South Dakota Deceptive Trade Practices and Consumer Protection Law
S.D. Codified Laws § 37-24-6
(On Behalf of the South Dakota State Class)**

2481. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2482. This count is brought on behalf of the South Dakota State Class against all Defendants.

2483. Defendants, Plaintiffs and the South Dakota State Class are “persons” within the meaning of S.D. Codified Laws § 37-24-1(8).

2484. Defendants are engaged in “trade” or “commerce” within the meaning of S.D. Codified Laws § 37-24-1(13).

2485. The South Dakota Deceptive Trade Practices and Consumer Protection (“South Dakota CPA”) prohibits “deceptive acts or practices, which are defined to include “[k]nowingly and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.” S.D. Codified Laws § 37-24-6(1).

2486. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

2487. South Dakota State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and South Dakota State Class members did not and could not unravel Defendants’ deception on their own.

1 2488. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
5 a transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 2489. The Clean Air Act and EPA regulations require that automobiles limit their
8 emissions output to specified levels. These laws are intended for the protection of public health
9 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
10 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
11 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
12 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
13 South Dakota CPA.

14 2490. Defendants intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiffs and the South Dakota State Class.

16 2491. Defendants knew or should have known that their conduct violated the South
17 Dakota CPA.

18 2492. Defendants owed Plaintiffs and the South Dakota State Class a duty to disclose the
19 illegality, public health and safety risks, the true nature of the Class Vehicles, because
20 Defendants:

21 A. possessed exclusive knowledge that they were manufacturing, selling, and
22 distributing vehicles throughout the United States that did not comply with regulations;

23 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
24 Class members; and/or

25 C. made incomplete representations about the Class Vehicles generally, and
26 the use of the defeat device in particular, while purposefully withholding material facts from
27 Plaintiffs that contradicted these representations.
28

1 2493. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
3 Plaintiffs and the South Dakota State Class.

4 2494. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
7 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

8 2495. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
9 general public. Defendants’ unlawful acts and practices complained of herein affect the public
10 interest.

11 2496. Plaintiffs and the South Dakota State Class suffered ascertainable loss and actual
12 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
13 of and failure to disclose material information. Plaintiffs and the South Dakota State Class
14 members who purchased or leased the Class Vehicles would not have purchased or leased them at
15 all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles
16 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered
17 diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing
18 duty to all their customers to refrain from unfair and deceptive practices under the South Dakota
19 CPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value
20 of their vehicles as a result of Defendants’ deceptive and unfair acts and practices made in the
21 course of Defendants’ business.

22 2497. Pursuant to S.D. Codified Laws § 37-24-31, Plaintiffs and the South Dakota State
23 Class seek an order enjoining Defendants’ unfair and/or deceptive acts or practices, damages,
24 punitive damages, and attorneys’ fees, costs, and any other just and proper relief to the extent
25 available under the South Dakota CPA.

**SOUTH DAKOTA COUNT II:
Breach of Express Warranty
S.D. Codified Laws §§ 57A-2-313 and 57-2A-210
(On Behalf of the South Dakota State Class)**

2498. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2499. This count is brought on behalf of the South Dakota State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2500. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under S.D. Codified Laws §§ 57A-104(1) and 57A-2A-103(1)(t), and “sellers” of motor vehicles under § 57A-104(1)(d).

2501. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under S.D. Codified Laws § 57A-2A-103(1)(p).

2502. The Class Vehicles are and were at all relevant times “goods” within the meaning of S.D. Codified Laws §§ 57A-2-105(1) and 57A-2A-103(1)(h).

2503. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2504. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and South Dakota State Class members regarding the performance and emission controls of their vehicles.

2505. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2506. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

2507. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

2508. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2509. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 2510. Defendants' warranties formed a basis of the bargain that was reached when South
6 Dakota State Class members purchased or leased Class Vehicles that are equipped with a defeat
7 device and non-compliant emission systems.

8 2511. Despite the existence of warranties, Defendants failed to inform South Dakota
9 State Class members that the Class Vehicles were intentionally designed and manufactured to be
10 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 2512. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2513. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2514. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make South Dakota State Class members whole and because Defendants have
20 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2515. Accordingly, recovery by the South Dakota State Class members is not restricted
22 to the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 2516. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. South Dakota State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2517. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the South Dakota State Class members' remedies would be insufficient to make them whole.

2518. Finally, because of Defendants' breach of warranty as set forth herein, South Dakota State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

2519. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2520. As a direct and proximate result of Defendants' breach of express warranties, South Dakota State Class members have been damaged in an amount to be determined at trial.

**SOUTH DAKOTA COUNT III:
Breach of Implied Warranty of Merchantability
S.D. Codified Laws §§ 57A-2-314 and 57-2A-212
(On Behalf of the South Dakota State Class)**

2521. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2522. This count is brought on behalf of the South Dakota State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2523. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under S.D. Codified Laws §§ 57A-104(1) and 57A-2A-103(1)(t), and "sellers" of motor vehicles under § 57A-104(1)(d).

2524. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under S.D. Codified Laws § 57A-2A-103(1)(p).

2525. The Class Vehicles are and were at all relevant times "goods" within the meaning of S.D. Codified Laws §§ 57A-2-105(1) and 57A-2A-103(1)(h).

1 2526. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to S.D. Codified Laws
3 §§ 57A-2-314 and 57A-2A-212.

4 2527. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
7 device and do not comply with federal and state emissions standards, rendering certain emissions
8 functions inoperative.

9 2528. Defendants were provided notice of these issues by the investigations of the EPA
10 and California state regulators, and numerous complaints filed against it including the instant
11 complaint, within a reasonable amount of time.

12 2529. As a direct and proximate result of Defendants' breach of the implied warranty of
13 merchantability, South Dakota State Class members have been damaged in an amount to be
14 proven at trial.

15 **TENNESSEE COUNT I:**
16 **Violations of the Tennessee Consumer Protection Act**
17 **Tenn. Code Ann. § 47-18-101 *et seq.***
 (On Behalf of the Tennessee State Class)

18 2530. Plaintiffs incorporate by reference each preceding paragraph as though fully set
19 forth herein.

20 2531. This count is brought on behalf of the Tennessee State Class against all
21 Defendants.

22 2532. Plaintiffs and the Tennessee State Class are "natural persons" and "consumers"
23 within the meaning of Tenn. Code § 47-18-103(2). Defendants are "person[s]" within the
24 meaning of Tenn. Code § 47-18-103(9).

25 2533. Defendants are engaged in "trade" or "commerce" or "consumer transactions"
26 within the meaning Tenn. Code § 47-18-103(9).

1 2534. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or
2 deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-
3 104.

4 2535. In the course of its business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
6 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
7 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
8 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
9 testing by way of deliberately induced false readings.

10 2536. Tennessee State Class members had no way of discerning that Defendants’
11 representations were false and misleading because Defendants’ defeat device software was
12 extremely sophisticated technology. Plaintiffs and Tennessee State Class members did not and
13 could not unravel Defendants’ deception on their own.

14 2537. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
18 a transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 2538. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
26 Tennessee CPA.

27 2539. Defendants intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiffs and the Tennessee State Class.

1 2540. Defendants knew or should have known that their conduct violated the Tennessee
2 CPA.

3 2541. Defendants owed Plaintiffs and the Tennessee State Class a duty to disclose the
4 illegality, public health and safety risks, the true nature of the Class Vehicles, because
5 Defendants:

6 A. possessed exclusive knowledge that they were manufacturing, selling, and
7 distributing vehicles throughout the United States that did not comply with regulations;

8 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
9 Class members; and/or

10 C. made incomplete representations about the Class Vehicles generally, and
11 the use of the defeat device in particular, while purposefully withholding material facts from
12 Plaintiffs that contradicted these representations.

13 2542. Defendants' fraudulent use of the "defeat device" and its concealment of the true
14 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
15 Plaintiffs and the Tennessee State Class.

16 2543. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
18 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
19 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

20 2544. Defendants' violations present a continuing risk to Plaintiffs as well as to the
21 general public. Defendants' unlawful acts and practices complained of herein affect the public
22 interest.

23 2545. Plaintiffs and the Tennessee State Class suffered ascertainable loss and actual
24 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
25 of and failure to disclose material information. Plaintiffs and the Tennessee State Class members
26 who purchased or leased the Class Vehicles would not have purchased or leased them at all
27 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
28 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished

1 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
 2 their customers to refrain from unfair and deceptive practices under the Tennessee CPA. All
 3 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
 4 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
 5 Defendants' business.

6 2546. Pursuant to Tenn. Code § 47-18-109, Plaintiffs and the Tennessee State Class seek
 7 an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, treble damages
 8 for willful and knowing violations, pursuant to § 47-18-109(a)(3), punitive damages, and
 9 attorneys' fees, costs, and any other just and proper relief to the extent available under the
 10 Tennessee CPA.

11 **TENNESSEE COUNT II:**
 12 **Breach of Express Warranty**
 13 **Tenn. Code Ann. §§ 47-2-313 and 47-2A-210**
 14 **(On Behalf of the Tennessee State Class)**

15 2547. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 16 fully set forth herein.

17 2548. This count is brought on behalf of the Tennessee State Class against the
 18 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

19 2549. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 20 vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and "sellers" of motor vehicles
 21 under § 47-2-103(1)(d).

22 2550. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 23 of motor vehicles under Tenn. Code § 47-2A-103(1)(p).

24 2551. The Class Vehicles are and were at all relevant times "goods" within the meaning
 25 of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

26 2552. In connection with the purchase or lease of each one of its new vehicles,
 27 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 28 occurs first. This warranty exists to cover "any repair to correct a manufacturers defect in
 materials or workmanship."

1 2553. Defendants also made numerous representations, descriptions, and promises to
2 Plaintiffs and Tennessee State Class members regarding the performance and emission controls of
3 their vehicles.

4 2554. For example, as shown below, Defendants included in the warranty booklets for
5 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
6 so as to conform at the time of sale with all applicable regulations of the United States
7 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

17 2555. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
18 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 2556. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 2557. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 2558. As manufacturers of light-duty vehicles, Defendants were required to provide
10 these warranties to purchasers or lessees of Class Vehicles.

11 2559. Defendants' warranties formed a basis of the bargain that was reached when
12 Tennessee State Class members purchased or leased Class Vehicles that are equipped with a
13 defeat device and non-compliant emission systems.

14 2560. Despite the existence of warranties, Defendants failed to inform Tennessee State
15 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
16 compliance with applicable state and federal emissions laws, and failed to fix the defective
17 emission components free of charge.

18 2561. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 2562. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 2563. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy
25 is insufficient to make Tennessee State Class members whole and because Defendants have failed
26 and/or have refused to adequately provide the promised remedies within a reasonable time.

1 2564. Accordingly, recovery by the Tennessee State Class members is not restricted to
2 the limited warranty promising to repair and correct Defendants' defect in materials and
3 workmanship, and they seek all remedies as allowed by law.

4 2565. Also, as alleged in more detail herein, at the time Defendants warranted and sold
5 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
6 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Tennessee State Class members were therefore
8 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 2566. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
11 and workmanship as many incidental and consequential damages have already been suffered
12 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
13 continued failure to provide such limited remedy within a reasonable time, and any limitation on
14 the Tennessee State Class members' remedies would be insufficient to make them whole.

15 2567. Finally, because of Defendants' breach of warranty as set forth herein, Tennessee
16 State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 2568. Defendants were provided notice of these issues by numerous complaints filed
20 against them, including the instant Complaint, within a reasonable amount of time.

21 2569. As a direct and proximate result of Defendants' breach of express warranties,
22 Tennessee State Class members have been damaged in an amount to be determined at trial.

23 **TENNESSEE COUNT III:**
24 **Breach of Implied Warranty of Merchantability**
25 **Tenn. Code Ann. §§ 47-2-314 and 47-2A-212**
 (On Behalf of the Tennessee State Class)

26 2570. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.
28

1 2580. This count is brought on behalf of the Texas State Class against all Defendants.

2 2581. Plaintiffs and the Texas State Class are individuals, partnerships or corporations
3 with assets of less than \$25 million (or are controlled by corporations or entities with less than
4 \$25 million in assets), *see* Tex. Bus. & Com. Code § 17.41, and are therefore “consumers”
5 pursuant to Tex. Bus. & Com. Code § 17.45(4). Defendants are “person[s]” within the meaning of
6 Tex. Bus. & Com. Code § 17.45(3).

7 2582. Defendants engaged in “trade” or “commerce” or “consumer transactions” within
8 the meaning Tex. Bus. & Com. Code § 17.46(a).

9 2583. The Texas Deceptive Trade Practices – Consumer Protection Act (“Texas DTPA”)
10 prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or
11 commerce,” Tex. Bus. & Com. Code § 17.46(a), and an “unconscionable action or course of
12 action,” which means “an act or practice which, to a consumer’s detriment, takes advantage of the
13 lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.”
14 Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3).

15 2584. In the course of its business, Defendants concealed and suppressed material facts
16 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
17 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
18 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
19 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
20 testing by way of deliberately induced false readings.

21 2585. Texas State Class members had no way of discerning that Defendants’
22 representations were false and misleading because Defendants’ defeat device software was
23 extremely sophisticated technology. Plaintiffs and Texas State Class members did not and could
24 not unravel Defendants’ deception on their own.

25 2586. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
26 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
27 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
28 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of

1 a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 2587. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
9 Texas DTPA.

10 2588. Defendants intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Texas State Class.

12 2589. Defendants knew or should have known that their conduct violated the Texas
13 DTPA.

14 2590. Defendants owed Plaintiffs and the Texas State Class a duty to disclose the
15 illegality, public health and safety risks, the true nature of the Class Vehicles, because
16 Defendants:

17 A. possessed exclusive knowledge that they were manufacturing, selling, and
18 distributing vehicles throughout the United States that did not comply with regulations;

19 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
20 Class members; and/or

21 C. made incomplete representations about the Class Vehicles generally, and
22 the use of the defeat device in particular, while purposefully withholding material facts from
23 Plaintiffs that contradicted these representations.

24 2591. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
25 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
26 Plaintiffs and the Texas State Class.

27 2592. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental

1 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
2 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

3 2593. Defendants' violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants' unlawful acts and practices complained of herein affect the public
5 interest.

6 2594. Plaintiffs and the Texas State Class suffered ascertainable loss and actual damages
7 as a direct and proximate result of Defendants' misrepresentations and its concealment of and
8 failure to disclose material information. Plaintiffs and the Texas State Class members who
9 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
10 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
11 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
12 their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their
13 customers to refrain from unfair and deceptive practices under the Texas DTPA. All owners of
14 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
15 a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants'
16 business.

17 2595. Pursuant to Tex. Bus. & Com. Code § 17.50, Plaintiffs and the Texas State Class
18 seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, multiple
19 damages for knowing and intentional violations, pursuant to § 17.50(b)(1), punitive damages, and
20 attorneys' fees, costs, and any other just and proper relief available under the Texas DTPA.

21 2596. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
22 LLC complying with Tex. Bus. & Com. Code Ann. § 17.505. Additionally, all Defendants were
23 provided notice of the issues raised in this count and this Complaint by the governmental
24 investigations, the numerous complaints filed against them, and the many individual notice letters
25 sent by consumers within a reasonable amount of time after the allegations of Class Vehicle
26 defects became public. Moreover, Plaintiffs sent a second notice letter pursuant to Tex. Bus. &
27 Com. Code Ann. § 17.505 to all Defendants on October 11, 2017. Because Defendants failed to
28

1 remedy their unlawful conduct within the requisite time period, Plaintiffs seek all damages and
 2 relief to which Plaintiffs and the Texas State Class are entitled.

3 **TEXAS COUNT II:**
 4 **Breach of Express Warranty**
 5 **Tex. Bus. & Com. Code §§ 2.313 and 2A.210**
 6 **(On Behalf of the Texas State Class)**

7 2597. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 8 fully set forth herein.

9 2598. This count is brought on behalf of the Texas State Class against the Volkswagen
 10 and Audi Defendants (collectively for this count, “Defendants”).

11 2599. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 12 vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and “sellers” of motor
 13 vehicles under § 2.103(a)(4)

14 2600. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 15 of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

16 2601. The Class Vehicles are and were at all relevant times “goods” within the meaning
 17 of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

18 2602. In connection with the purchase or lease of each one of its new vehicles,
 19 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 20 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 21 materials or workmanship.”

22 2603. Defendants also made numerous representations, descriptions, and promises to
 23 Plaintiffs and Texas State Class members regarding the performance and emission controls of
 24 their vehicles.

25 2604. For example, as shown below, Defendants included in the warranty booklets for
 26 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
 27 so as to conform at the time of sale with all applicable regulations of the United States
 28 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2605. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

2606. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

2607. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2608. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 2609. Defendants' warranties formed a basis of the bargain that was reached when Texas
6 State Class members purchased or leased Class Vehicles that are equipped with a defeat device
7 and non-compliant emission systems.

8 2610. Despite the existence of warranties, Defendants failed to inform Texas State Class
9 members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 2611. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2612. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2613. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Texas State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2614. Accordingly, recovery by the Texas State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 2615. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Texas State Class members were therefore induced to
28 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2616. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Texas State Class members' remedies would be insufficient to make them whole.

2617. Finally, because of Defendants' breach of warranty as set forth herein, Texas State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

2618. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2619. As a direct and proximate result of Defendants' breach of express warranties, Texas State Class members have been damaged in an amount to be determined at trial.

**TEXAS COUNT III:
Breach of Implied Warranty of Merchantability
Tex. Bus. & Com. Code §§ 2.314 and 2A.212
(On Behalf of the Texas State Class)**

2620. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2621. This count is brought on behalf of the Texas State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2622. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and "sellers" of motor vehicles under § 2.103(a)(4)

2623. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

2624. The Class Vehicles are and were at all relevant times "goods" within the meaning of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

1 transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits,
2 if it has not” or “(b) indicates that the subject of a consumer transaction is of a particular standard,
3 quality, grade, style, or model, if it is not.” Utah Code § 13-11-4. “An unconscionable act or
4 practice by a supplier in connection with a consumer transaction” also violates the Utah CSPA.
5 Utah Code § 13-11-5.

6 2634. In the course of its business, Defendants concealed and suppressed material facts
7 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
8 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
9 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
10 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
11 testing by way of deliberately induced false readings.

12 2635. Utah State Class members had no way of discerning that Defendants’
13 representations were false and misleading because Defendants’ defeat device software was
14 extremely sophisticated technology. Plaintiffs and Utah State Class members did not and could
15 not unravel Defendants’ deception on their own.

16 2636. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
17 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
18 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
19 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
20 a transaction involving Class Vehicles has been supplied in accordance with a previous
21 representation when it has not.

22 2637. The Clean Air Act and EPA regulations require that automobiles limit their
23 emissions output to specified levels. These laws are intended for the protection of public health
24 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
25 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
26 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
27 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
28 Utah CSPA.

1 2638. Defendants intentionally and knowingly misrepresented material facts regarding
2 the Class Vehicles with intent to mislead Plaintiffs and the Utah State Class.

3 2639. Defendants knew or should have known that their conduct violated the Utah
4 CSPA.

5 2640. Defendants owed Plaintiffs and the Utah State Class a duty to disclose the
6 illegality, public health and safety risks, the true nature of the Class Vehicles, because
7 Defendants:

8 A. possessed exclusive knowledge that they were manufacturing, selling, and
9 distributing vehicles throughout the United States that did not comply with regulations;

10 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
11 Class members; and/or

12 C. made incomplete representations about the Class Vehicles generally, and
13 the use of the defeat device in particular, while purposefully withholding material facts from
14 Plaintiffs that contradicted these representations.

15 2641. Defendants' fraudulent use of the "defeat device" and its concealment of the true
16 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
17 Plaintiffs and the Utah State Class.

18 2642. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
20 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
21 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

22 2643. Defendants' violations present a continuing risk to Plaintiffs as well as to the
23 general public. Defendants' unlawful acts and practices complained of herein affect the public
24 interest.

25 2644. Plaintiffs and the Utah State Class suffered ascertainable loss and actual damages
26 as a direct and proximate result of Defendants' misrepresentations and its concealment of and
27 failure to disclose material information. Plaintiffs and the Utah State Class members who
28 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if

1 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
 2 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
 3 their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their
 4 customers to refrain from unfair and deceptive practices under the Utah CSPA. All owners of
 5 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as
 6 a result of Defendants’ deceptive and unfair acts and practices made in the course of Defendants’
 7 business.

8 2645. Pursuant to Utah Code Ann. § 13-11-4, Plaintiffs and the Utah State Class seek
 9 monetary relief against Defendants measured as the greater of (a) actual damages in an amount to
 10 be determined at trial and (b) statutory damages in the amount of \$2,000 for each Plaintiffs and
 11 each Utah State Class member, reasonable attorneys’ fees, and any other just and proper relief
 12 available under the Utah CSPA.

13 **UTAH COUNT II:**
 14 **Breach of Express Warranty**
 15 **Utah Code §§ 70A-2-313 and 70-2A-210**
 16 **(On Behalf of the Utah State Class)**

17 2646. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 18 fully set forth herein.

19 2647. This count is brought on behalf of the Utah State Class against the Volkswagen
 20 and Audi Defendants (collectively for this count, “Defendants”).

21 2648. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 22 vehicles under Utah Code § 70A-2-104(1) and 70A-2a-103(1)(t), and “sellers” of motor vehicles
 23 under § 70A-2-103(1)(d).

24 2649. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 25 of motor vehicles under Utah Code § 70A-2a-103(1)(p).

26 2650. The Class Vehicles are and were at all relevant times “goods” within the meaning
 27 of Utah Code §§ 70A-2-105(1) and 70A-2a-103(1)(h).

28 2651. In connection with the purchase or lease of each one of its new vehicles,
 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever

1 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
2 materials or workmanship.”

3 2652. Defendants also made numerous representations, descriptions, and promises to
4 Plaintiffs and Utah State Class members regarding the performance and emission controls of their
5 vehicles.

6 2653. For example, as shown below, Defendants included in the warranty booklets for
7 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
8 so as to conform at the time of sale with all applicable regulations of the United States
9 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

19 2654. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
20 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 2655. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
24 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles (whichever
28 comes first). These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 2656. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
5 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
6 Design and Defect Warranty required by the EPA covers repair of emission control or emission
7 related parts, which fail to function or function improperly because of a defect in materials or
8 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
9 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
10 comes first.

11 2657. As manufacturers of light-duty vehicles, Defendants were required to provide
12 these warranties to purchasers or lessees of Class Vehicles.

13 2658. Defendants' warranties formed a basis of the bargain that was reached when Utah
14 State Class members purchased or leased Class Vehicles that are equipped with a defeat device
15 and non-compliant emission systems.

16 2659. Despite the existence of warranties, Defendants failed to inform Utah State Class
17 members that the Class Vehicles were intentionally designed and manufactured to be out of
18 compliance with applicable state and federal emissions laws, and failed to fix the defective
19 emission components free of charge.

20 2660. Defendants breached the express warranty promising to repair and correct
21 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
22 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

23 2661. Affording Defendants a reasonable opportunity to cure their breach of written
24 warranties would be unnecessary and futile here.

25 2662. Furthermore, the limited warranty promising to repair and correct Defendants'
26 defect in materials and workmanship fails in its essential purpose because the contractual remedy
27 is insufficient to make Utah State Class members whole and because Defendants have failed
28 and/or have refused to adequately provide the promised remedies within a reasonable time.

2664. Also, as alleged in more detail herein, at the time Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Utah State Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2665. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Utah State Class members' remedies would be insufficient to make them whole.

2666. Finally, because of Defendants' breach of warranty as set forth herein, Utah State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

2667. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2668. As a direct and proximate result of Defendants' breach of express warranties, Utah State Class members have been damaged in an amount to be determined at trial.

**UTAH COUNT III:
Breach of Implied Warranty of Merchantability
Utah Code §§ 70A-2-314 and 70-2A-212
(On Behalf of the Utah State Class)**

2669. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1 2670. This count is brought on behalf of the Utah State Class against the Volkswagen
2 and Audi Defendants (collectively for this count, “Defendants”).

3 2671. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under Utah Code §§ 70A-2-104(1) and 70A-2a-103(1)(t), and “sellers” of motor vehicles
5 under § 70A-2-103(1)(d).

6 2672. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
7 of motor vehicles under Utah Code § 70A-2a-103(1)(p).

8 2673. The Class Vehicles are and were at all relevant times “goods” within the meaning
9 of Utah Code §§ 70A-2-105(1) and 70A-2a-103(1)(h).

10 2674. A warranty that the Class Vehicles were in merchantable condition and fit for the
11 ordinary purpose for which vehicles are used is implied by law pursuant to Utah Code §§ 70A-2-
12 314 and 70A-2a-212.

13 2675. These Class Vehicles, when sold or leased and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
15 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
16 device and do not comply with federal and state emissions standards, rendering certain emissions
17 functions inoperative.

18 2676. Defendants were provided notice of these issues by the investigations of the EPA
19 and California state regulators, and numerous complaints filed against it including the instant
20 complaint, within a reasonable amount of time.

21 2677. As a direct and proximate result of Defendants’ breach of the implied warranty of
22 merchantability, Utah State Class members have been damaged in an amount to be proven at trial.

23 **VERMONT COUNT I:**
24 **Violations of the Vermont Consumer Fraud Act**
25 **Vt. Stat. Ann. Tit. 9, § 2451 *et seq.***
 (On Behalf of the Vermont State Class)

26 2678. Plaintiffs incorporate by reference each preceding paragraph as though fully set
27 forth herein.

28 2679. This count is brought on behalf of the Vermont State Class against all Defendants.

1 2680. Plaintiffs and the Vermont State Class are “consumers” within the meaning of Vt.
2 Stat. Tit. 9, § 451a(a).

3 2681. Defendants are “person[s]” within the meaning of Vt. Code R. § 100(3) (citing Vt.
4 Stat. Tit. 9, § 2453).

5 2682. Defendants are engaged in “commerce” within the meaning of Vt. Stat. Tit. 9,
6 § 2453(a).

7 2683. The Vermont Consumer Protection Act (“Vermont CPA”) prohibits “[u]nfair
8 methods of competition in commerce and unfair or deceptive acts or practices in commerce....”
9 Vt. Stat. Tit. 9, § 2453(a).

10 2684. In the course of its business, Defendants concealed and suppressed material facts
11 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
12 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
13 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
14 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
15 testing by way of deliberately induced false readings.

16 2685. Vermont State Class members had no way of discerning that Defendants’
17 representations were false and misleading because Defendants’ defeat device software was
18 extremely sophisticated technology. Plaintiffs and Vermont State Class members did not and
19 could not unravel Defendants’ deception on their own.

20 2686. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
21 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
22 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
23 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
24 a transaction involving Class Vehicles has been supplied in accordance with a previous
25 representation when it has not.

26 2687. The Clean Air Act and EPA regulations require that automobiles limit their
27 emissions output to specified levels. These laws are intended for the protection of public health
28 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the

1 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
2 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
3 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
4 Vermont UTPA.

5 2688. Defendants intentionally and knowingly misrepresented material facts regarding
6 the Class Vehicles with intent to mislead Plaintiffs and the Vermont State Class.

7 2689. Defendants knew or should have known that their conduct violated the Vermont
8 UTPA.

9 2690. Defendants owed Plaintiffs and the Vermont State Class a duty to disclose the
10 illegality, public health and safety risks, the true nature of the Class Vehicles, because
11 Defendants:

12 A. possessed exclusive knowledge that they were manufacturing, selling, and
13 distributing vehicles throughout the United States that did not comply with regulations;

14 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
15 Class members; and/or

16 C. made incomplete representations about the Class Vehicles generally, and
17 the use of the defeat device in particular, while purposefully withholding material facts from
18 Plaintiffs that contradicted these representations.

19 2691. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
20 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
21 Plaintiffs and the Vermont State Class.

22 2692. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
24 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
25 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

26 2693. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
27 general public. Defendants’ unlawful acts and practices complained of herein affect the public
28 interest.

2694. Plaintiffs and the Vermont State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the Vermont State Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Vermont UTPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.

2695. Pursuant to Vt. Stat. Tit. 9, § 2461(b), Plaintiffs and the Vermont State Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, actual damages, damages up to three times the consideration provided, punitive damages, attorneys' fees, costs, and any other just and proper relief available under the Vermont UTPA.

VERMONT COUNT II:
Vermont Lemon Law
Vt. Stat. Tit. 9, § 4170 *et seq.*
(On Behalf of the Vermont State Class)

2696. Plaintiffs and the Vermont State Class own or lease "motor vehicles" within the meaning of Vt. Stat. tit. 9, § 4171(6), because these vehicles were purchased, leased, or registered in Vermont by Defendants and were registered in Vermont within 15 days of the date of purchase or lease. These vehicles are not: (1) tractors, (2) motorized highway building equipment, (3) roadmaking appliances, (4) snowmobiles, (5) motorcycles, (5) mopeds, (6) the living portion of recreation vehicles, or (7) trucks with a gross vehicle weight over 10,000 pounds.

2697. Defendants are "manufacturer[s]" of the Class Vehicles within the meaning of Vt. Stat. Tit. 9, § 4171(7) because it manufactures and assembles new motor vehicles or imports for distribution through distributors of motor vehicles. It is also a "manufacturer" within the definition of "distributor" and "factory branch." *Id.*

1 2698. Plaintiffs and the Vermont State Class are “consumers” within the meaning of Vt.
2 Stat. Tit. 9, § 4171(2) because they bought or leased the Class Vehicles, were transferred their
3 vehicles during the duration the applicable warranty, or are otherwise entitled to the attendant
4 terms of warranty. They are not governmental entities or a business or commercial enterprise that
5 registers or leases three or more motor vehicles.

6 2699. The Class Vehicles did not conform to their express warranties during the term of
7 warranty because they contained a “defeat device” designed to circumvent state and federal
8 emissions standards. These devices did in fact circumvent emissions standards and substantially
9 impaired the use, market value, and safety of their motor vehicles.

10 2700. Defendants had actual knowledge of the conformities during the term of warranty.
11 But the nonconformities continued to exist throughout this term, as they have not been fixed.
12 Plaintiffs and Vermont State Class members are excused from notifying Defendants of the
13 nonconformities because it was already fully aware of the problem—as it intentionally created
14 it—and any repair attempt is futile.

15 2701. Defendants have had a reasonable opportunity to cure the nonconformities during
16 the relevant period because of its actual knowledge of, creation of, and attempt to conceal the
17 nonconformities, but has not done so as required under Vt. Stat. Tit. 9, § 4173.

18 2702. For vehicles purchased, Plaintiffs and the Vermont State Class demand a full
19 refund of the contract price and all credits and allowances for any trade-in or down payment,
20 license fees, finance charges, credit charges, registration fees and any similar charges and
21 incidental and consequential damages. Vt. Stat. Tit. 9, § 4173(e). For vehicles leased, Plaintiffs
22 and the Vermont State Class demand the aggregate deposit and rental payments previously paid,
23 and any incidental and consequential damages incurred. Vt. Stat. Tit. 9, § 4173(e), (i). Plaintiffs
24 and the Vermont State Class reject an offer of replacement and will retain their vehicles until
25 payment is tendered.

**VERMONT COUNT III:
Breach of Express Warranty
Vt. Stat. Tit. 9, §§ 2-313 and 2A-210
(On Behalf of the Vermont State Class)**

2703. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2704. This count is brought on behalf of the Vermont State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2705. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Vt. Stat. Tit. 9A, §§ 2-104(1) and 2A-103(1)(t), and “sellers” of motor vehicles under § 2-103(1)(d).

2706. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Vt. Stat. Tit. 9A, § 2A-103(1)(p).

2707. The Class Vehicles are and were at all relevant times “goods” within the meaning of Vt. Stat. Tit. 9A, §§ 2-105(1) and 2A-103(1)(h).

2708. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2709. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Vermont State Class members regarding the performance and emission controls of their vehicles.

2710. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2711. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

2712. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

2713. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2714. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 2715. Defendants' warranties formed a basis of the bargain that was reached when
6 Vermont State Class members purchased or leased Class Vehicles that are equipped with a defeat
7 device and non-compliant emission systems.

8 2716. Despite the existence of warranties, Defendants failed to inform Vermont State
9 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 2717. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2718. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2719. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Vermont State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2720. Accordingly, recovery by the Vermont State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 2721. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Vermont State Class members were therefore induced
28 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2722. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Vermont State Class members' remedies would be insufficient to make them whole.

2723. Finally, because of Defendants' breach of warranty as set forth herein, Vermont State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

2724. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

2725. As a direct and proximate result of Defendants' breach of express warranties, Vermont State Class members have been damaged in an amount to be determined at trial.

**VERMONT COUNT IV:
Breach of Implied Warranty of Merchantability
Vt. Stat. Tit. 9, §§ 2-314 and 2A-212
(On Behalf of the Vermont State Class)**

2726. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2727. This count is brought on behalf of the Vermont State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2728. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Vt. Stat. Tit. 9A, § 2-104(1) and 2A-103(1)(t), and "sellers" of motor vehicles under § 2-103(1)(d).

2729. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under Vt. Stat. Tit. 9A, § 2A-103(1)(p).

2730. The Class Vehicles are and were at all relevant times "goods" within the meaning of Vt. Stat. Tit. 9A, §§ 2-105(1) and 2A-103(1)(h).

2731. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Vt. Stat. Tit. 9A, §§ 2-314 and 2A-212.

2732. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2733. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2734. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Vermont State Class members have been damaged in an amount to be proven at trial.

**VIRGINIA COUNT I:
Violations of the Virginia Consumer Protection Act
Va. Code Ann. § 59.1-196 *et seq.*
(On Behalf of the Virginia State Class)**

2735. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2736. Plaintiffs Joseph Denney and Michael Gray (for the purpose of this count, “Plaintiffs”) bring this count on behalf of themselves and the Virginia State Class against all Defendants.

2737. Defendants, Plaintiffs, and the Virginia State Class are “persons” within the meaning of Va. Code § 59.1-198.

2738. Defendants are “supplier[s]” within the meaning of Va. Code § 59.1-198.

2739. The Virginia Consumer Protection Act (“Virginia CPA”) makes unlawful “fraudulent acts or practices.” Va. Code § 59.1-200(A).

1 2740. In the course of its business, Defendants concealed and suppressed material facts
2 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
3 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
4 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
5 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
6 testing by way of deliberately induced false readings.

7 2741. Virginia State Class members had no way of discerning that Defendants’
8 representations were false and misleading because Defendants’ defeat device software was
9 extremely sophisticated technology. Plaintiffs and Virginia State Class members did not and
10 could not unravel Defendants’ deception on their own.

11 2742. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
12 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
13 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
14 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
15 a transaction involving Class Vehicles has been supplied in accordance with a previous
16 representation when it has not.

17 2743. The Clean Air Act and EPA regulations require that automobiles limit their
18 emissions output to specified levels. These laws are intended for the protection of public health
19 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
20 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
21 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
22 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
23 Virginia CPA.

24 2744. Defendants intentionally and knowingly misrepresented material facts regarding
25 the Class Vehicles with intent to mislead Plaintiffs and the Virginia State Class.

26 2745. Defendants knew or should have known that their conduct violated the Virginia
27 CPA.

1 2746. Defendants owed Plaintiffs and the Virginia State Class a duty to disclose the
2 illegality, public health and safety risks, the true nature of the Class Vehicles, because
3 Defendants:

4 A. possessed exclusive knowledge that they were manufacturing, selling, and
5 distributing vehicles throughout the United States that did not comply with regulations;

6 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
7 Class members; and/or

8 C. made incomplete representations about the Class Vehicles generally, and
9 the use of the defeat device in particular, while purposefully withholding material facts from
10 Plaintiffs that contradicted these representations.

11 2747. Defendants' fraudulent use of the "defeat device" and its concealment of the true
12 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
13 Plaintiffs and the Virginia State Class.

14 2748. Defendants' unfair or deceptive acts or practices were likely to and did in fact
15 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
16 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
17 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

18 2749. Defendants' violations present a continuing risk to Plaintiffs as well as to the
19 general public. Defendants' unlawful acts and practices complained of herein affect the public
20 interest.

21 2750. Plaintiffs and the Virginia State Class suffered ascertainable loss and actual
22 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
23 of and failure to disclose material information. Plaintiffs and the Virginia State Class members
24 who purchased or leased the Class Vehicles would not have purchased or leased them at all
25 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
26 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
27 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
28 their customers to refrain from unfair and deceptive practices under the Virginia CPA. All owners

1 of Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles
 2 as a result of Defendants’ deceptive and unfair acts and practices made in the course of
 3 Defendants’ business.

4 2751. Pursuant to Va. Code § 59.1-204(A)–(B), Plaintiffs and the Virginia State Class
 5 are entitled to the greater of actual damages or \$500 for each Virginia State Class member,
 6 attorneys’ fees, and costs. Because Defendants’ actions were willful, Plaintiffs and the Virginia
 7 State Class should each receive the greater of treble damages or \$1,000. *Id.*

8 **VIRGINIA COUNT II:**
 9 **Breach of Express Warranty**
 10 **Va. Code §§ 8.2-313 and 8.2A-210**
(On Behalf of the Virginia State Class)

11 2752. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 12 fully set forth herein.

13 2753. Plaintiffs Joseph Denney and Michael Gray (for the purpose of this count,
 14 “Plaintiffs”) bring this count on behalf of themselves and the Virginia State Class against the
 15 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

16 2754. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 17 vehicles under Va. Code §§ 8.2-104(1) and 8.2A-103(1)(t), and “sellers” of motor vehicles under
 18 § 8.2-103(1)(d).

19 2755. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 20 of motor vehicles under Va. Code § 8.2A-103(1)(p).

21 2756. The Class Vehicles are and were at all relevant times “goods” within the meaning
 22 of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).

23 2757. In connection with the purchase or lease of each one of its new vehicles,
 24 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 25 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 26 materials or workmanship.”
 27
 28

1 2758. Defendants also made numerous representations, descriptions, and promises to
2 Plaintiffs and Virginia State Class members regarding the performance and emission controls of
3 their vehicles.

4 2759. For example, as shown below, Defendants included in the warranty booklets for
5 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
6 so as to conform at the time of sale with all applicable regulations of the United States
7 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

17 2760. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
18 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 2761. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 2762. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 2763. As manufacturers of light-duty vehicles, Defendants were required to provide
10 these warranties to purchasers or lessees of Class Vehicles.

11 2764. Defendants' warranties formed a basis of the bargain that was reached when
12 Virginia State Class members purchased or leased Class Vehicles that are equipped with a defeat
13 device and non-compliant emission systems.

14 2765. Despite the existence of warranties, Defendants failed to inform Virginia State
15 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
16 compliance with applicable state and federal emissions laws, and failed to fix the defective
17 emission components free of charge.

18 2766. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 2767. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 2768. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy
25 is insufficient to make Virginia State Class members whole and because Defendants have failed
26 and/or have refused to adequately provide the promised remedies within a reasonable time.

2771. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Virginia State Class members' remedies would be insufficient to make them whole.

2773. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, within a reasonable amount of time.

**VIRGINIA COUNT III:
Breach of Implied Warranty of Merchantability
Va. Code §§ 8.2-314 and 8.2A-212
(On Behalf of the Virginia State Class)**

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1 2776. Plaintiffs Joseph Denney and Michael Gray (for the purpose of this count,
2 “Plaintiffs”) bring this count on behalf of themselves and the Virginia State Class against the
3 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

4 2777. Defendants are and were at all relevant times “merchant[s]” with respect to motor
5 vehicles under Va. Code §§ 8.2-104(1) and 8.2A-103(1)(t), and “sellers” of motor vehicles under
6 § 8.2-103(1)(d).

7 2778. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
8 of motor vehicles under Va. Code § 8.2A-103(1)(p).

9 2779. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).

11 2780. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to Va. Code §§ 8.2-314
13 and 8.2A-212.

14 2781. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
17 device and do not comply with federal and state emissions standards, rendering certain emissions
18 functions inoperative.

19 2782. Defendants were provided notice of these issues by the investigations of the EPA
20 and California state regulators, and numerous complaints filed against it including the instant
21 complaint, within a reasonable amount of time.

22 2783. As a direct and proximate result of Defendants’ breach of the implied warranty of
23 merchantability, Virginia State Class members have been damaged in an amount to be proven at
24 trial.

**WASHINGTON STATE COUNT I:
Violations of the Washington Consumer Protection Act
Wash. Rev. Code Ann. § 19.86.010 *et seq.*
(On Behalf of the Washington State Class)**

2784. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2785. This count is brought on behalf of the Washington State Class against all Defendants.

2786. Defendants, Plaintiffs, and the Washington State Class are “persons” within the meaning of Wash. Rev. Code § 19.86.010(2).

2787. Defendants engaged in “trade” or “commerce” within the meaning of Wash. Rev. Code § 19.86.010(2).

2788. The Washington Consumer Protection Act (“Washington CPA”) makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Wash. Rev. Code § 19.86.020.

2789. In the course of its business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit larger quantities of noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings.

2790. Washington State Class members had no way of discerning that Defendants’ representations were false and misleading because Defendants’ defeat device software was extremely sophisticated technology. Plaintiffs and Washington State Class members did not and could not unravel Defendants’ deception on their own.

2791. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of

1 a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 2792. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
9 Washington CPA.

10 2793. Defendants intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Washington State Class.

12 2794. Defendants knew or should have known that their conduct violated the
13 Washington CPA.

14 2795. Defendants owed Plaintiffs and the Washington State Class a duty to disclose the
15 illegality, public health and safety risks, the true nature of the Class Vehicles, because
16 Defendants:

17 A. possessed exclusive knowledge that they were manufacturing, selling, and
18 distributing vehicles throughout the United States that did not comply with regulations;

19 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
20 Class members; and/or

21 C. made incomplete representations about the Class Vehicles generally, and
22 the use of the defeat device in particular, while purposefully withholding material facts from
23 Plaintiffs that contradicted these representations.

24 2796. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
25 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
26 Plaintiffs and the Washington State Class.

27 2797. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental

1 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
2 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

3 2798. Defendants' violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants' unlawful acts and practices complained of herein affect the public
5 interest.

6 2799. Plaintiffs and the Washington State Class suffered ascertainable loss and actual
7 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
8 of and failure to disclose material information. Plaintiffs and the Washington State Class
9 members who purchased or leased the Class Vehicles would not have purchased or leased them at
10 all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles
11 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered
12 diminished value of their vehicles, as well as lost or diminished use. Defendants had an ongoing
13 duty to all their customers to refrain from unfair and deceptive practices under the Washington
14 CPA. All owners of Class Vehicles suffered ascertainable loss in the form of the diminished value
15 of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the
16 course of Defendants' business.

17 2800. Pursuant to Wash. Rev. Code § 19.86.090, Plaintiffs and the Washington State
18 Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages,
19 punitive damages, and attorneys' fees, costs, and any other just and proper relief available under
20 the Washington CPA. Because Defendants' actions were willful and knowing, Plaintiffs'
21 damages should be trebled.

22 **WASHINGTON STATE COUNT II:**
23 **Washington Lemon Law**
24 **Wash. Rev. Code § 19.118.005 *et seq.***
(On Behalf of the Washington State Class)

25 2801. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
26 fully set forth herein.

27 2802. This count is brought on behalf of the Washington State Class against the
28 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

1 2803. Plaintiffs and the Washington State Class own or lease “new motor vehicles”
2 within the meaning of Wash. Rev. Code § 19.118.021(12), because these vehicles are self-
3 propelled primarily designed for the transportation of persons or property over the public
4 highways and were originally purchased or leased at retail from a new motor vehicle dealer or
5 leasing company in Washington. These vehicles do not include vehicles purchased or leased by a
6 business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease
7 agreement or those portions of a motor home designated, used, or maintained primarily as a
8 mobile dwelling, office, or commercial space.

9 2804. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
10 Wash. Rev. Code § 19.118.021(8) because it is in the business of constructing or assembling new
11 motor vehicles or is engaged in the business of importing new motor vehicles into the United
12 States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers.

13 2805. Plaintiffs and the Washington State Class are “consumers” within the meaning of
14 Wash. Rev. Code § 19.118.021(4) because they entered into an agreement or contract for the
15 transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease,
16 during the eligibility period as defined by Wash. Rev. Code § 19.118.021(6).

17 2806. The Class Vehicles did not conform to their warranties as defined by Wash. Rev.
18 Code § 19.118.021(22), during the “eligibility period,” defined by Wash. Rev. Code
19 § 19.118.021(6), or the coverage period under the applicable written warranty because they
20 contained a “defeat device” designed to circumvent state and federal emissions standards. Wash.
21 Rev. Code § 19.118.031. These devices did in fact circumvent emissions standards and
22 substantially impaired the use, market value, and safety of their motor vehicles.

23 2807. Defendants had actual knowledge of the conformities during warranty periods. But
24 the nonconformities continued to exist throughout this term, as they have not been fixed.
25 Plaintiffs and Washington State Class members are excused from notifying Defendants of the
26 nonconformities because it was already fully aware of the problem—as it intentionally created
27 it—and any repair attempt is futile.
28

1 2808. Defendants have had a reasonable opportunity to cure the nonconformities because
2 of its actual knowledge of, creation of, and attempt to conceal the nonconformities, but has not
3 done so as required under Wash. Rev. Code § 19.118.031.

4 2809. For vehicles purchased, Plaintiffs and the Washington State Class demand a full
5 refund of the contract price, all collateral charges, and incidental costs. Wash. Rev. Code
6 § 19.118.041(1)(b). For vehicles leased, Plaintiffs and the Washington State Class demand all
7 payments made under the lease including but not limited to all lease payments, trade-in value or
8 inception payment, security deposit, and all collateral charges and incidental costs. The consumer
9 is also relieved of any future obligation to the lessor or lienholder. Plaintiffs and the Washington
10 State Class reject an offer of replacement and will retain their vehicles until payment is tendered.

11 **WASHINGTON STATE COUNT III:**
12 **Breach of Express Warranty**
13 **Wash Rev. Code §§ 62A.2-313 and 62A.2A-210**
14 **(On Behalf of the Washington State Class)**

15 2810. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 2811. This count is brought on behalf of the Washington State Class against the
18 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

19 2812. Defendants are and were at all relevant times “merchant[s]” with respect to motor
20 vehicles under Wash. Rev. Code §§ 62A.2-104(1) and 62A.2A-103(1)(t), and “sellers” of motor
21 vehicles under § 2.103(a)(4).

22 2813. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
23 of motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).

24 2814. The Class Vehicles are and were at all relevant times “goods” within the meaning
25 of Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).

26 2815. In connection with the purchase or lease of each one of its new vehicles,
27 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
28 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
materials or workmanship.”

1 2816. Defendants also made numerous representations, descriptions, and promises to
2 Plaintiffs and Washington State Class members regarding the performance and emission controls
3 of their vehicles.

4 2817. For example, as shown below, Defendants included in the warranty booklets for
5 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
6 so as to conform at the time of sale with all applicable regulations of the United States
7 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
Volkswagen Group of America, Inc. (“Audi”),
the authorized United States importer of Audi
vehicles, warrants to the original retail pur-
chaser or original lessee and any subsequent
purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

17 2818. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
18 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 2819. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 2820. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 2821. As manufacturers of light-duty vehicles, Defendants were required to provide
10 these warranties to purchasers or lessees of Class Vehicles.

11 2822. Defendants' warranties formed a basis of the bargain that was reached when
12 Washington State Class members purchased or leased Class Vehicles that are equipped with a
13 defeat device and non-compliant emission systems.

14 2823. Despite the existence of warranties, Defendants failed to inform Washington State
15 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
16 compliance with applicable state and federal emissions laws, and failed to fix the defective
17 emission components free of charge.

18 2824. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 2825. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 2826. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy
25 is insufficient to make Washington State Class members whole and because Defendants have
26 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1 2827. Accordingly, recovery by the Washington State Class members is not restricted to
2 the limited warranty promising to repair and correct Defendants' defect in materials and
3 workmanship, and they seek all remedies as allowed by law.

4 2828. Also, as alleged in more detail herein, at the time Defendants warranted and sold
5 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
6 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Washington State Class members were therefore
8 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 2829. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
11 and workmanship as many incidental and consequential damages have already been suffered
12 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
13 continued failure to provide such limited remedy within a reasonable time, and any limitation on
14 the Washington State Class members' remedies would be insufficient to make them whole.

15 2830. Finally, because of Defendants' breach of warranty as set forth herein, Washington
16 State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 2831. Defendants were provided notice of these issues by numerous complaints filed
20 against them, including the instant Complaint, within a reasonable amount of time.

21 2832. As a direct and proximate result of Defendants' breach of express warranties,
22 Washington State Class members have been damaged in an amount to be determined at trial.

23 **WASHINGTON STATE COUNT IV:**
24 **Breach of Implied Warranty of Merchantability**
25 **Wash Rev. Code §§ 62A.2-314 and 62A.2A-212**
 (On Behalf of the Washington State Class)

26 2833. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.
28

1 2834. This count is brought on behalf of the Washington State Class against the
2 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

3 2835. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under Wash. Rev. Code § 62A.2-104(1) and 62A.2A-103(1)(t), and “sellers” of motor
5 vehicles under § 2.103(a)(4).

6 2836. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
7 of motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).

8 2837. The Class Vehicles are and were at all relevant times “goods” within the meaning
9 of Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).

10 2838. A warranty that the Class Vehicles were in merchantable condition and fit for the
11 ordinary purpose for which vehicles are used is implied by law pursuant to Wash. Rev. Code
12 §§ 62A.2-314 and 62A.2A-212.

13 2839. These Class Vehicles, when sold or leased and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
15 Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat
16 device and do not comply with federal and state emissions standards, rendering certain emissions
17 functions inoperative.

18 2840. Defendants were provided notice of these issues by the investigations of the EPA
19 and California state regulators, and numerous complaints filed against it including the instant
20 complaint, within a reasonable amount of time.

21 2841. As a direct and proximate result of Defendants’ breach of the implied warranty of
22 merchantability, Washington State Class members have been damaged in an amount to be proven
23 at trial.

24 **WEST VIRGINIA COUNT I:**
25 **Violations of the West Virginia Consumer Credit and Protection Act**
26 **W. Va. Code § 46A-1-101 *et seq.***
 (On Behalf of the West Virginia State Class)

27 2842. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 2843. Plaintiff Lyle Fairless (for the purposes of this count, “Plaintiff”) brings this count
2 on behalf of the West Virginia State Class against all Defendants.

3 2844. Defendants, Plaintiff, and the West Virginia State Class are “persons” within the
4 meaning of W. Va. Code § 46A-1-102(31). Plaintiff and the West Virginia State Class members
5 are “consumers” within the meaning of W. Va. Code §§ 46A-1-102(2) and 46A-1-102(12).

6 2845. Defendants are engaged in “trade” or “commerce” within the meaning of W. Va.
7 Code § 46A-6-102(6).

8 2846. The West Virginia Consumer Credit and Protection Act (“West Virginia CCPA”)
9 makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the
10 conduct of any trade or commerce.” W. Va. Code § 46A-6-104.

11 2847. In the course of its business, Defendants concealed and suppressed material facts
12 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
13 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
14 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
15 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
16 testing by way of deliberately induced false readings.

17 2848. West Virginia State Class members had no way of discerning that Defendants’
18 representations were false and misleading because Defendants’ defeat device software was
19 extremely sophisticated technology. Plaintiff and West Virginia State Class members did not and
20 could not unravel Defendants’ deception on their own.

21 2849. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
22 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
23 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
24 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
25 a transaction involving Class Vehicles has been supplied in accordance with a previous
26 representation when it has not.

27 2850. The Clean Air Act and EPA regulations require that automobiles limit their
28 emissions output to specified levels. These laws are intended for the protection of public health

1 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
 2 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
 3 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
 4 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
 5 West Virginia CCPA.

6 2851. Defendants intentionally and knowingly misrepresented material facts regarding
 7 the Class Vehicles with intent to mislead Plaintiff and the West Virginia State Class.

8 2852. Defendants knew or should have known that their conduct violated the West
 9 Virginia CCPA.

10 2853. Defendants owed Plaintiff and the West Virginia State Class a duty to disclose the
 11 illegality, public health and safety risks, the true nature of the Class Vehicles, because
 12 Defendants:

13 A. possessed exclusive knowledge that they were manufacturing, selling, and
 14 distributing vehicles throughout the United States that did not comply with regulations;

15 B. intentionally concealed the foregoing from regulators, Plaintiff, and/or
 16 Class members; and/or

17 C. made incomplete representations about the Class Vehicles generally, and
 18 the use of the defeat device in particular, while purposefully withholding material facts from
 19 Plaintiff and/or Class members that contradicted these representations.

20 2854. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
 21 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
 22 Plaintiff and the West Virginia State Class.

23 2855. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
 24 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
 25 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
 26 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

1 2856. Defendants' violations present a continuing risk to Plaintiff, the West Virginia
2 State Class, as well as to the general public. Defendants' unlawful acts and practices complained
3 of herein affect the public interest.

4 2857. Plaintiff and the West Virginia State Class suffered ascertainable loss and actual
5 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
6 of and failure to disclose material information. Plaintiff and the West Virginia State Class
7 members who purchased or leased the Class Vehicles would not have purchased or leased them at
8 all and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles
9 rendered legal to sell—would have paid significantly less for them. Plaintiff and the West
10 Virginia State Class also suffered diminished value of their vehicles, as well as lost or diminished
11 use. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive
12 practices under the West Virginia CCPA. All owners of Class Vehicles suffered ascertainable loss
13 in the form of the diminished value of their vehicles as a result of Defendants' deceptive and
14 unfair acts and practices made in the course of Defendants' business.

15 2858. Pursuant to W. Va. Code § 46A-6-106(a), Plaintiff and the West Virginia State
16 Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages,
17 punitive damages, and any other just and proper relief available under the West Virginia CCPA.

18 2859. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
19 LLC complying with W. Va. Code § 46A-6-106(b). Additionally, all Defendants were provided
20 notice of the issues raised in this count and this Complaint by the governmental investigations,
21 the numerous complaints filed against them, and the many individual notice letters sent by
22 consumers within a reasonable amount of time after the allegations of Class Vehicle defects
23 became public. Moreover, Plaintiffs sent a second notice letter pursuant to W. Va. Code § 46A-6-
24 106(b) to all Defendants on October 11, 2017. Because Defendants failed to remedy their
25 unlawful conduct within the requisite time period, Plaintiffs seek all damages and relief to which
26 Plaintiff and the West Virginia State Class are entitled.

WEST VIRGINIA COUNT II:
West Virginia Lemon Law
W. Va. Code § 46A-6A-1 *et seq.*
(On Behalf of the West Virginia State Class)

2860. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2861. Plaintiff Lyle Fairless (for the purposes of this count, “Plaintiff”) brings this count on behalf of the West Virginia State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2862. The West Virginia State Class members who purchased or leased the Class Vehicles in West Virginia are “consumers” within the meaning of W. Va. Code § 46A-6A-2(1).

2863. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of W. Va. Code § 46A-6A-2(2).

2864. The Class Vehicles are “motor vehicles” as defined by W. Va. Code § 46A-6A-2(4).

2865. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2866. Defendants also made numerous representations, descriptions, and promises to Plaintiff and West Virginia State Class members regarding the performance and emission controls of their vehicles.

2867. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2868. The Clean Air Act requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

2869. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emissions systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emissions control unit (ECU), and the onboard emissions diagnostic device or computer.

2870. The EPA requires vehicle manufacturers to issue Defect Warranties with respect to their vehicles' emissions systems. Thus, Defendants also provide an express warranty to its vehicles through a Federal Emissions Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly due to a defect in materials or workmanship. This warranty

1 provides protection for two years or 24,000 miles, whichever comes first, or, for the major
2 emissions control components, for eight years or 80,000 miles, whichever comes first.

3 2871. As a manufacturer of light-duty vehicles, Defendants were required to provide
4 these warranties to Plaintiff and the West Virginia State Class members. Defendants warranties
5 formed the basis of the bargain that was reached when Plaintiff and other Class members
6 purchased or leased their Class Vehicles equipped with the non-compliant engine system from
7 Defendants.

8 2872. The emissions defect in the Class Vehicles existed from the date of the original
9 sale of the new vehicle to the consumer but could not be detected by a reasonable consumer
10 exercising reasonable care and diligence. Therefore, applicable express warranties for the Class
11 Vehicles containing the defeat device software would be extended. Further extension of the
12 express warranty period is now required because of the difficulties the Defendants may have in
13 executing a massive recall Class Vehicles in the United States.

14 2873. On December 22, 2016, at least one West Virginia Class member sent a letter to
15 Defendants to provide opportunity to cure pursuant to W.Va. Code §§ 46A-6A-3(a) and 5(c).
16 Defendants failed to offer to cure within the requisite statutory time period. Plaintiff and West
17 Virginia State Class members therefore seek all damages and relief available against Defendants
18 under the West Virginia Lemon Law.

19 2874. As a direct and proximate result of the Defendants' breaches of their duties under
20 West Virginia's Lemon Law, the West Virginia State Class members received goods whose
21 defect substantially impairs their value. The West Virginia State Class has been damaged by the
22 diminished market value of the vehicles along with the compromised functioning and/or non-use
23 of their Class Vehicles.

24 2875. Defendants have a duty under § 46A-6A-3 to make all repairs necessary to correct
25 the defect herein described to bring the Class Vehicles into conformity with all written warranties.
26 In the event that Defendants cannot affect such repairs, they have a duty to replace each Class
27 Vehicle with a comparable new motor vehicle that conforms to the warranty.
28

2876. As a result of Defendants' breaches, the Plaintiff and the West Virginia State Class are entitled to the following:

A. Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;

B. Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;

C. Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is out of service by reason of the nonconformity or by reason of repair; and

D. Reasonable attorney fees.

**WEST VIRGINIA COUNT III:
Breach of Express Warranty
W. Va. Code §§ 46-2-313 and 46-2A-210
(On Behalf of the West Virginia State Class)**

2877. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2878. Plaintiff Lyle Fairless (for the purposes of this count, "Plaintiff") brings this count on behalf of the West Virginia State Class against the Volkswagen and Audi Defendants (collectively for this count, "Defendants").

2879. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under W. Va. Code § 46-2-104(1) and 46-2A-103(1)(t), and "sellers" of motor vehicles under § 46-2-103(1)(d).

2880. With respect to leases, Defendants are and were at all relevant times a "lessor[s]" of motor vehicles under W. Va. Code § 46-2A-103(1)(p).

2881. The Class Vehicles are and were at all relevant times "goods" within the meaning of W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).

1 2882. In connection with the purchase or lease of each one of its new vehicles,
 2 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 3 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 4 materials or workmanship.”

5 2883. Defendants also made numerous representations, descriptions, and promises to
 6 Plaintiff and West Virginia State Class members regarding the performance and emission controls
 7 of their vehicles.

8 2884. For example, as shown below, Defendants included in the warranty booklets for
 9 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
 10 so as to conform at the time of sale with all applicable regulations of the United States
 11 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of
 Volkswagen Group of America, Inc. (“Audi”),
 the authorized United States importer of Audi
 vehicles, warrants to the original retail pur-
 chaser or original lessee and any subsequent
 purchaser or lessee that every **model year**
2014 Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

21 2885. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
 22 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
 23 Warranty.”

24 2886. The EPA requires vehicle manufacturers to provide a Performance Warranty with
 25 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
 26 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
 27 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
 28 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major

1 emission control components are covered for the first eight years or 80,000 miles (whichever
2 comes first). These major emission control components subject to the longer warranty include the
3 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
4 device or computer.

5 2887. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
6 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
7 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
8 Design and Defect Warranty required by the EPA covers repair of emission control or emission
9 related parts, which fail to function or function improperly because of a defect in materials or
10 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
11 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
12 comes first.

13 2888. As manufacturers of light-duty vehicles, Defendants were required to provide
14 these warranties to purchasers or lessees of Class Vehicles.

15 2889. Defendants' warranties formed a basis of the bargain that was reached when West
16 Virginia State Class members purchased or leased Class Vehicles that are equipped with a defeat
17 device and non-compliant emission systems.

18 2890. Despite the existence of warranties, Defendants failed to inform West Virginia
19 State Class members that the Class Vehicles were intentionally designed and manufactured to be
20 out of compliance with applicable state and federal emissions laws, and failed to fix the defective
21 emission components free of charge.

22 2891. Defendants breached the express warranty promising to repair and correct
23 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
24 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

25 2892. Affording Defendants a reasonable opportunity to cure their breach of written
26 warranties would be unnecessary and futile here.

27 2893. Furthermore, the limited warranty promising to repair and correct Defendants'
28 defect in materials and workmanship fails in its essential purpose because the contractual remedy

1 is insufficient to make West Virginia State Class members whole and because Defendants have
2 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

3 2894. Accordingly, recovery by the West Virginia State Class members is not restricted
4 to the limited warranty promising to repair and correct Defendants' defect in materials and
5 workmanship, and they seek all remedies as allowed by law.

6 2895. Also, as alleged in more detail herein, at the time Defendants warranted and sold
7 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
8 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. West Virginia State Class members were therefore
10 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 2896. Moreover, many of the injuries flowing from the Class Vehicles cannot be
12 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
13 and workmanship as many incidental and consequential damages have already been suffered
14 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
15 continued failure to provide such limited remedy within a reasonable time, and any limitation on
16 the West Virginia State Class members' remedies would be insufficient to make them whole.

17 2897. Finally, because of Defendants' breach of warranty as set forth herein, West
18 Virginia State Class members assert, as additional and/or alternative remedies, the revocation of
19 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
20 currently owned or leased, and for such other incidental and consequential damages as allowed.

21 2898. Defendants were provided notice of these issues by numerous complaints filed
22 against them, including the instant Complaint, within a reasonable amount of time.

23 2899. As a direct and proximate result of Defendants' breach of express warranties, West
24 Virginia State Class members have been damaged in an amount to be determined at trial.

**WEST VIRGINIA COUNT IV:
Breach of Implied Warranty of Merchantability
W. Va. Code §§ 46-2-314 and 46-2A-212
(On Behalf of the West Virginia State Class)**

2900. Plaintiffs re-allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

2901. Plaintiff Lyle Fairless (for the purposes of this count, “Plaintiff”) brings this count on behalf of the West Virginia State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2902. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under W. Va. Code §§ 46-2-104(1) and 46-2A-103(1)(t), and “sellers” of motor vehicles under § 46-2-103(1)(d).

2903. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under W. Va. Code § 46-2A-103(1)(p).

2904. The Class Vehicles are and were at all relevant times “goods” within the meaning of W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).

2905. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to W. Va. Code §§ 46-2-314 and 46-2A-212.

2906. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2907. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

1 extremely sophisticated technology. Plaintiffs and Wisconsin State Class members did not and
2 could not unravel Defendants' deception on their own.

3 2916. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
4 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
5 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
6 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
7 a transaction involving Class Vehicles has been supplied in accordance with a previous
8 representation when it has not.

9 2917. The Clean Air Act and EPA regulations require that automobiles limit their
10 emissions output to specified levels. These laws are intended for the protection of public health
11 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
12 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
13 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
14 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
15 Wisconsin DTPA.

16 2918. Defendants intentionally and knowingly misrepresented material facts regarding
17 the Class Vehicles with intent to mislead Plaintiffs and the Wisconsin State Class.

18 2919. Defendants knew or should have known that their conduct violated the Wisconsin
19 DTPA.

20 2920. Defendants owed Plaintiffs and the Wisconsin State Class a duty to disclose the
21 illegality, public health and safety risks, the true nature of the Class Vehicles, because
22 Defendants:

23 A. possessed exclusive knowledge that they were manufacturing, selling, and
24 distributing vehicles throughout the United States that did not comply with regulations;

25 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
26 Class members; and/or
27
28

1 C. made incomplete representations about the Class Vehicles generally, and
2 the use of the defeat device in particular, while purposefully withholding material facts from
3 Plaintiffs that contradicted these representations.

4 2921. Defendants' fraudulent use of the "defeat device" and its concealment of the true
5 characteristics of the Class Vehicles' fuel consumption and CO2 emissions were material to
6 Plaintiffs and the Wisconsin State Class.

7 2922. Defendants' unfair or deceptive acts or practices were likely to and did in fact
8 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
9 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
10 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

11 2923. Defendants' violations present a continuing risk to Plaintiffs as well as to the
12 general public. Defendants' unlawful acts and practices complained of herein affect the public
13 interest.

14 2924. Plaintiffs and the Wisconsin State Class suffered ascertainable loss and actual
15 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
16 of and failure to disclose material information. Plaintiffs and the Wisconsin State Class members
17 who purchased or leased the Class Vehicles would not have purchased or leased them at all
18 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
19 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
20 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
21 their customers to refrain from unfair and deceptive practices under the Wisconsin DTPA. All
22 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
23 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
24 Defendants' business.

25 2925. As a direct and proximate result of Defendants' violations of the Wisconsin
26 DTPA, Plaintiffs and the Wisconsin State Class have suffered injury-in-fact and/or actual
27 damage.
28

1 2926. Plaintiffs and the Wisconsin State Class seek damages, court costs and attorneys’
 2 fees under Wis. Stat. § 100.18(11)(b)(2), and any other just and proper relief available under the
 3 Wisconsin DTPA.

4 **WISCONSIN COUNT II:**
 5 **Breach of Express Warranty**
 6 **Wis. Stat. §§ 402.313 and 411.210**
 (On Behalf of the Wisconsin State Class)

7 2927. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 8 fully set forth herein.

9 2928. Plaintiffs Mark Dressel and Paul Joachimczyk (for the purpose of this count,
 10 “Plaintiffs”) bring this count on behalf of themselves and the Wisconsin State Class against the
 11 Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

12 2929. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 13 vehicles under Wis. Stat. §§ 402.104(3) and 411.103(1)(t), and “sellers” of motor vehicles under
 14 § 402.103(1)(d).

15 2930. With respect to leases, Defendants are and were at all relevant times a “lessor[s]”
 16 of motor vehicles under Wis. Stat. § 411.103(1)(p).

17 2931. The Class Vehicles are and were at all relevant times “goods” within the meaning
 18 of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).

19 2932. In connection with the purchase or lease of each one of its new vehicles,
 20 Defendants provide an express warranty for a period of four years or 50,000 miles, whichever
 21 occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in
 22 materials or workmanship.”

23 2933. Defendants also made numerous representations, descriptions, and promises to
 24 Plaintiffs and Wisconsin State Class members regarding the performance and emission controls
 25 of their vehicles.

26 2934. For example, as shown below, Defendants included in the warranty booklets for
 27 some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped
 28

1 so as to conform at the time of sale with all applicable regulations of the United States
2 Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

12 2935. The Clean Air Act also requires manufacturers of light-duty vehicles to provide
13 two federal emission control warranties: a “Performance Warranty” and a “Design and Defect
14 Warranty.”

15 2936. The EPA requires vehicle manufacturers to provide a Performance Warranty with
16 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
17 its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
18 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
19 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
20 emission control components are covered for the first eight years or 80,000 miles (whichever
21 comes first). These major emission control components subject to the longer warranty include the
22 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
23 device or computer.

24 2937. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
25 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
26 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
27 Design and Defect Warranty required by the EPA covers repair of emission control or emission
28 related parts, which fail to function or function improperly because of a defect in materials or

1 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
2 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
3 comes first.

4 2938. As manufacturers of light-duty vehicles, Defendants were required to provide
5 these warranties to purchasers or lessees of Class Vehicles.

6 2939. Defendants' warranties formed a basis of the bargain that was reached when
7 Wisconsin State Class members purchased or leased Class Vehicles that are equipped with a
8 defeat device and non-compliant emission systems.

9 2940. Despite the existence of warranties, Defendants failed to inform Wisconsin State
10 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
11 compliance with applicable state and federal emissions laws, and failed to fix the defective
12 emission components free of charge.

13 2941. Defendants breached the express warranty promising to repair and correct
14 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
15 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

16 2942. Affording Defendants a reasonable opportunity to cure their breach of written
17 warranties would be unnecessary and futile here.

18 2943. Furthermore, the limited warranty promising to repair and correct Defendants'
19 defect in materials and workmanship fails in its essential purpose because the contractual remedy
20 is insufficient to make Wisconsin State Class members whole and because Defendants have failed
21 and/or have refused to adequately provide the promised remedies within a reasonable time.

22 2944. Accordingly, recovery by the Wisconsin State Class members is not restricted to
23 the limited warranty promising to repair and correct Defendants' defect in materials and
24 workmanship, and they seek all remedies as allowed by law.

25 2945. Also, as alleged in more detail herein, at the time Defendants warranted and sold
26 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
27 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
28

1 material facts regarding the Class Vehicles. Wisconsin State Class members were therefore
2 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 2946. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
5 and workmanship as many incidental and consequential damages have already been suffered
6 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
7 continued failure to provide such limited remedy within a reasonable time, and any limitation on
8 the Wisconsin State Class members' remedies would be insufficient to make them whole.

9 2947. Finally, because of Defendants' breach of warranty as set forth herein, Wisconsin
10 State Class members assert, as additional and/or alternative remedies, the revocation of
11 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
12 currently owned or leased, and for such other incidental and consequential damages as allowed.

13 2948. Defendants were provided notice of these issues by numerous complaints filed
14 against them, including the instant Complaint, within a reasonable amount of time.

15 2949. As a direct and proximate result of Defendants' breach of express warranties,
16 Wisconsin State Class members have been damaged in an amount to be determined at trial.

17 **WISCONSIN COUNT III:**
18 **Breach of Implied Warranty of Merchantability**
19 **Wis. Stat. §§ 402.314 and 411.212**
20 **(On Behalf of the Wisconsin State Class)**

21 2950. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
22 paragraphs as though fully set forth herein.

23 2951. Plaintiffs Mark Dressel and Paul Joachimczyk (for the purpose of this count,
24 "Plaintiffs") bring this count on behalf of themselves and the Wisconsin State Class against the
25 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

26 2952. Defendants are and were at all relevant times "merchant[s]" with respect to motor
27 vehicles under Wis. Stat. §§ 402.104(3) and 411.103(1)(t), and "sellers" of motor vehicles under
28 § 402.103(1)(d).

2953. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Wis. Stat. § 411.103(1)(p).

2954. The Class Vehicles are and were at all relevant times “goods” within the meaning of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).

2955. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Wis. Stat. §§ 402.314 and 411.212.

2956. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

2957. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

2958. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Wisconsin State Class members have been damaged in an amount to be proven at trial.

**WYOMING COUNT I:
Violations of the Wyoming Consumer Protection Act,
Wyo. Stat. § 40-12-101, *et seq.*
(On Behalf of the Wyoming State Class)**

2959. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2960. This count is brought on behalf of the Wyoming State Class against all Defendants.

2961. Plaintiffs, the Wyoming State Class and Defendants are “persons” within the meaning of Wyo. Stat. § 40-12-102(a)(i).

2962. The Class Vehicles are “merchandise” pursuant to Wyo. Stat. § 40-12-102(a)(vi).

1 2963. Each sale or lease of an Class Vehicle to a Plaintiffs or Wyoming State Class
2 member was a “consumer transaction” as defined by Wyo. Stat. § 40-12-102(a)(ii). These
3 consumer transactions occurred “in the course of [Defendants’] business” under Wyo. Stat. § 40-
4 12-105(a). Plaintiffs and Wyoming State Class members purchased or leased one or more Class
5 Vehicles.

6 2964. The Wyoming Consumer Protection Act (“Wyoming CPA”) prohibits lists
7 unlawful deceptive trade practices, including when a seller: “(i) Represents that merchandise has
8 a source, origin, sponsorship, approval, accessories, or uses it does not have;” “(iii) Represents
9 that merchandise is of a particular standard, grade, style or model, if it is not;” “(x) Advertises
10 merchandise with intent not to sell it as advertised;” “(xv) Engages in unfair or deceptive acts or
11 practices.” Wyo. Stat. § 40-12-105(a).

12 2965. In the course of its business, Defendants concealed and suppressed material facts
13 concerning the Class Vehicles. Defendants accomplished this by installing a defeat device in the
14 Class Vehicles that caused the vehicles to operate in a low emission test mode only during
15 emissions testing. During normal operations, the Class Vehicles would emit larger quantities of
16 noxious CO₂. The result was what Defendants intended—the Class Vehicles passed emissions
17 testing by way of deliberately induced false readings.

18 2966. Wyoming State Class members had no way of discerning that Defendants’
19 representations were false and misleading because Defendants’ defeat device software was
20 extremely sophisticated technology. Plaintiffs and Wyoming State Class members did not and
21 could not unravel Defendants’ deception on their own.

22 2967. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
23 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
24 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
25 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
26 a transaction involving Class Vehicles has been supplied in accordance with a previous
27 representation when it has not.
28

1 2968. The Clean Air Act and EPA regulations require that automobiles limit their
 2 emissions output to specified levels. These laws are intended for the protection of public health
 3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
 4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1809. By
 5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
 6 for purchase, Defendants violated federal law and therefore engaged in conduct that violates the
 7 Wyoming CPA.

8 2969. Defendants intentionally and knowingly misrepresented material facts regarding
 9 the Class Vehicles with intent to mislead Plaintiffs and the Wyoming State Class.

10 2970. Defendants knew or should have known that their conduct violated the Wyoming
 11 CPA.

12 2971. Defendants owed Plaintiffs and the Wyoming State Class a duty to disclose the
 13 illegality, public health and safety risks, the true nature of the Class Vehicles, because
 14 Defendants:

15 A. possessed exclusive knowledge that they were manufacturing, selling, and
 16 distributing vehicles throughout the United States that did not comply with regulations;

17 B. intentionally concealed the foregoing from regulators, Plaintiffs, and/or
 18 Class members; and/or

19 C. made incomplete representations about the Class Vehicles generally, and
 20 the use of the defeat device in particular, while purposefully withholding material facts from
 21 Plaintiffs that contradicted these representations.

22 2972. Defendants’ fraudulent use of the “defeat device” and its concealment of the true
 23 characteristics of the Class Vehicles’ fuel consumption and CO2 emissions were material to
 24 Plaintiffs and the Wyoming State Class.

25 2973. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
 26 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
 27 cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing
 28 of environmental cleanliness and integrity at Audi, and the true value of the Class Vehicles.

1 2974. Defendants' violations present a continuing risk to Plaintiffs as well as to the
2 general public. Defendants' unlawful acts and practices complained of herein affect the public
3 interest.

4 2975. Plaintiffs and the Wyoming State Class suffered ascertainable loss and actual
5 damages as a direct and proximate result of Defendants' misrepresentations and its concealment
6 of and failure to disclose material information. Plaintiffs and the Wyoming State Class members
7 who purchased or leased the Class Vehicles would not have purchased or leased them at all
8 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
9 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
10 value of their vehicles, as well as lost or diminished use. Defendants had an ongoing duty to all
11 their customers to refrain from unfair and deceptive practices under the Wyoming CPA. All
12 owners of Class Vehicles suffered ascertainable loss in the form of the diminished value of their
13 vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of
14 Defendants' business.

15 2976. Pursuant to Wyo. Stat. § 40-12-108(a), Plaintiffs and the Wyoming State Class
16 seek damages as determined at trial, and any other just and proper relief available under the
17 Wyoming CPA, including but not limited to court costs and reasonable attorneys' fees as
18 provided in Wyo. Stat. § 40-12-108(b).

19 2977. On December 21, 2016, a notice letter was sent to Audi AG and Audi of America,
20 LLC complying with Wyo. Stat. Ann. § 40-12-109. Additionally, all Defendants were provided
21 notice of the issues raised in this count and this Complaint by the governmental investigations,
22 the numerous complaints filed against them, and the many individual notice letters sent by
23 consumers within a reasonable amount of time after the allegations of Class Vehicle defects
24 became public. Moreover, Plaintiffs sent a second notice letter pursuant to Wyo. Stat. Ann. § 40-
25 12-109 to all Defendants on October 11, 2017. Because Defendants failed to remedy their
26 unlawful conduct within the requisite time period, Plaintiffs seek all damages and relief to which
27 Plaintiffs and the Wyoming State Class are entitled.
28

**WYOMING COUNT II:
Breach of Express Warranty
Wyo. Stat. §§ 34.1-2-313 and 34.1-2A-210
(On Behalf of the Wyoming State Class)**

2978. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

2979. This count is brought on behalf of the Wyoming State Class against the Volkswagen and Audi Defendants (collectively for this count, “Defendants”).

2980. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Wyo. Stat. §§ 34.1-2-104(a) and 34.1-2.A-103(a)(xx), and “sellers” of motor vehicles under § 34.1-2-103(a)(iv).

2981. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Wyo. Stat. § 34.1-2.A-103(a)(xvi).

2982. The Class Vehicles are and were at all relevant times “goods” within the meaning of Wyo. Stat. §§ 34.1-2-105(a) and 34.1-2.A-103(a)(viii).

2983. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

2984. Defendants also made numerous representations, descriptions, and promises to Plaintiffs and Wyoming State Class members regarding the performance and emission controls of their vehicles.

2985. For example, as shown below, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency.”

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

2986. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a "Performance Warranty" and a "Design and Defect Warranty."

2987. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major emission control components are covered for the first eight years or 80,000 miles (whichever comes first). These major emission control components subject to the longer warranty include the catalytic converters, the electronic emission control unit, and the onboard emission diagnostic device or computer.

2988. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts, which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2989. As manufacturers of light-duty vehicles, Defendants were required to provide
4 these warranties to purchasers or lessees of Class Vehicles.

5 2990. Defendants' warranties formed a basis of the bargain that was reached when
6 Wyoming State Class members purchased or leased Class Vehicles that are equipped with a
7 defeat device and non-compliant emission systems.

8 2991. Despite the existence of warranties, Defendants failed to inform Wyoming State
9 Class members that the Class Vehicles were intentionally designed and manufactured to be out of
10 compliance with applicable state and federal emissions laws, and failed to fix the defective
11 emission components free of charge.

12 2992. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2993. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2994. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy
19 is insufficient to make Wyoming State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2995. Accordingly, recovery by the Wyoming State Class members is not restricted to
22 the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 2996. Also, as alleged in more detail herein, at the time Defendants warranted and sold
25 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
26 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Wyoming State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 2997. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 2 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
 3 and workmanship as many incidental and consequential damages have already been suffered
 4 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
 5 continued failure to provide such limited remedy within a reasonable time, and any limitation on
 6 the Wyoming State Class members' remedies would be insufficient to make them whole.

7 2998. Finally, because of Defendants' breach of warranty as set forth herein, Wyoming
 8 State Class members assert, as additional and/or alternative remedies, the revocation of
 9 acceptance of the goods and the return to them the purchase or lease price of all Class Vehicles
 10 currently owned or leased, and for such other incidental and consequential damages as allowed.

11 2999. Defendants were provided notice of these issues by numerous complaints filed
 12 against them, including the instant Complaint, within a reasonable amount of time.

13 3000. As a direct and proximate result of Defendants' breach of express warranties,
 14 Wyoming State Class members have been damaged in an amount to be determined at trial.

15 **WYOMING COUNT III:**
 16 **Breach of Implied Warranty of Merchantability**
 17 **Wyo. Stat. §§ 34.1-2-314 and 34.1-2A-212**
 (On Behalf of the Wyoming State Class)

18 3001. Plaintiffs re-allege and incorporate by reference all allegations of the preceding
 19 paragraphs as though fully set forth herein.

20 3002. This count is brought on behalf of the Wyoming State Class against the
 21 Volkswagen and Audi Defendants (collectively for this count, "Defendants").

22 3003. Defendants are and were at all relevant times "merchant[s]" with respect to motor
 23 vehicles under Wyo. Stat. §§ 34.1-2-104(a) and 34.1-2.A-103(a)(xx), and "sellers" of motor
 24 vehicles under § 34.1-2-103(a)(iv).

25 3004. With respect to leases, Defendants are and were at all relevant times a "lessor[s]"
 26 of motor vehicles under Wyo. Stat. § 34.1-2.A-103(a)(xvi).

27 3005. The Class Vehicles are and were at all relevant times "goods" within the meaning
 28 of Wyo. Stat. §§ 34.1-2-105(a) and 34.1-2.A-103(a)(viii).

3006. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Wyo. Stat. §§ 34.1-2-314 and 34.1-2.A-212.

3007. These Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Class Vehicles are inherently defective in that they are equipped with a defeat device and do not comply with federal and state emissions standards, rendering certain emissions functions inoperative.

3008. Defendants were provided notice of these issues by the investigations of the EPA and California state regulators, and numerous complaints filed against it including the instant complaint, within a reasonable amount of time.

3009. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Wyoming State Class members have been damaged in an amount to be proven at trial.

X. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class and all Subclasses, respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

A. An order temporarily and permanently enjoining Defendants from continuing the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices alleged in this Complaint;

B. Injunctive and equitable relief in the form of a comprehensive program to repair, retrofit, and/or buyback all Class Vehicles, and to fully reimburse and make whole all Class members for all costs and economic losses, and degradation of mileage performance, durability, and reliability that the Class Vehicles will incur by being brought into compliance with federal and state law;

1 C. Environmental reparations, mitigation, and remediation to offset the harm
2 caused by the illegal emissions of the Class Vehicles, based on the mileage driven by all Class
3 Vehicles and/or other appropriate matrices of environmental harm;

4 D. A declaration that Defendants are financially responsible for all Class
5 notice and the administration of Class relief;

6 E. Costs, restitution, compensatory damages for economic loss and out-of-
7 pocket costs, treble damages under Civil RICO, multiple damages under applicable states' laws,
8 punitive and exemplary damages under applicable law; and disgorgement, in an amount to be
9 determined at trial;

10 F. Rescission of all Class Vehicle purchases or leases, including
11 reimbursement and/or compensation of the full purchase price of all Class Vehicles, including
12 taxes, licenses, and other fees.

13 G. Any and applicable statutory and civil penalties;

14 H. An order requiring Defendants to pay both pre- and post-judgment interest
15 on any amounts awarded.

16 I. An award of costs and attorneys' fees, as allowed by law;

17 J. Leave to amend this Complaint to conform to the evidence produced at
18 trial; and

19 K. Such other or further relief as the Court may deem appropriate, just, and
20 equitable.

21 **XI. DEMAND FOR JURY TRIAL**

22 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any
23 and all issues in this action so triable of right.

1 Dated: October 12, 2017

Respectfully submitted,

2 LIEFF CABRASER HEIMANN & BERNSTEIN,
3 LLP

4 By: /s/ Elizabeth J. Cabraser

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5 *Plaintiffs' Steering Committee*
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